23 Am. Jur. 2d Deeds I A Refs.

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Deeds

Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

I. In General

A. Definitions and Distinctions

Topic Summary | Correlation Table

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West's Key Number Digest

West's Key Number Digest, Deeds 11, 13, 31, 136

A.L.R. Library

A.L.R. Index, Deeds
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23 Am. Jur. 2d Deeds § 1

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I. In General

A. Definitions and Distinctions

§ 1. Deed

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 3

Forms

Am. Jur. Legal Forms 2d § 87:5 (Formal requirements)

A deed is a written document that on its face conveys title or an interest in real property.[1] It is a written contract[2] and subject to the parol evidence rule.[3] A deed is the final expression of the agreements between the parties as to every subject which it undertakes to deal with, and any conflicts between the terms of prior agreements and the terms of the deed are resolved by the deed.[4]

Footnotes

1 Wildwood Medical Center, L.L.C. v. Montgomery County, 405 Md. 489, 954 A.2d 457 (2008); Drake v. Hance, 195 N.C. App. 588, 673 S.E.2d 411 (2009); Stutzman v. Office of Wyoming State Engineer, 2006 WY 30, 130 P.3d 470 (Wyo. 2006).

2 Department of Transp. v. Meadow Trace, Inc., 274 Ga. App. 267, 617 S.E.2d 246 (2005), judgment aff'd, 280 Ga. 720, 631 S.E.2d 359 (2006).

3 Radspinner v. Charlesworth, 369 N.W.2d 109 (N.D. 1985).

4 Abi-Najm v. Concord Condominium, LLC, 280 Va. 350, 699 S.E.2d 483 (2010).

As to the construction of deeds, see §§ 193 to 270.

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I. In General

A. Definitions and Distinctions

§ 2. Conveyance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 3

The term "conveyance" connotes a deed whereby the title to land is transferred from one person to another[1] by delivery and acceptance of a deed.[2] "Conveyance" may include a lease.[3] However, the passing of real property by intestacy has been held not to constitute a "conveyance" within the meaning of a real property statute.[4]

"Grant" is a synonym of "conveyance."[5]

Footnotes

1 Town of Groton v. Mardie Lane Homes, LLC, 286 Conn. 280, 943 A.2d 449 (2008); Deslauriers v. Senesac, 331 Ill. 437, 163 N.E. 327, 62 A.L.R. 511 (1928); Vann v. Edwards, 135 N.C. 661, 47 S.E. 784 (1904); McQuiddy Printing Co. v. Hirsig, 23 Tenn. App. 434, 134 S.W.2d 197 (1939).

2 Premier Bank v. Board of County Com'rs of County of Bent, 214 P.3d 574 (Colo. App. 2009).

3 Waskey v. Chambers, 224 U.S. 564, 32 S. Ct. 597, 56 L. Ed. 885, 3 Alaska Fed. 855 (1912); Stewart v. Talbott, 58 Colo. 563, 146 P. 771 (1915).
As to the distinction between a deed and a lease, see § 4.

4 Estate of Geiser, 90 Misc. 2d 991, 396 N.Y.S.2d 792 (Sur. Ct. 1977).

5 Dearing v. Brush Creek Coal Co., 182 Tenn. 302, 186 S.W.2d 329 (1945).

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I. In General

A. Definitions and Distinctions

§ 3. Indenture; deed poll

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 3, 5

An "indenture" is a deed or writing containing a conveyance, bargain, contract, covenant, or agreement between two or more parties,[1] which gets its name from its form of writing, which is in counterpart with the edges indented to facilitate identification of the parts.[2] It is thus distinguishable from a "deed poll" which is a deed executed by the grantor only, the usual form of commencement being "Know all men by these presents" or "I, … hereby grant, etc."[3]

Footnotes

1 K & K Food Services, Inc. v. S & H, Inc., 2000 OK 31, 3 P.3d 705 (Okla. 2000).

2 Sterling v. Park, 129 Ga. 309, 58 S.E. 828 (1907).

3 Sterling v. Park, 129 Ga. 309, 58 S.E. 828 (1907); Hawkins v. Corbit, 1921 OK 345, 83 Okla. 275, 201 P. 649 (1921).

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I. In General

A. Definitions and Distinctions

§ 4. Distinction between deeds and leases or mortgages

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 5, 6

Although leases are, in a sense, conveyances,[1] the term "deed" is not ordinarily used to describe them. Property law regards a lease as equivalent to a sale of the premises for the term of the lease.[2]

The term "deed" is to be distinguished from a mortgage or a deed of trust which does not really dispose of the title to the land but merely provides security for a debt.[3]

A bond for title does not operate as a conveyance of itself.[4]

Footnotes

1 Am. Jur. 2d, Landlord and Tenant § 19.
As to whether leases may fall within a statutory definition of the term "conveyance," see § 2.

2 Am. Jur. 2d, Landlord and Tenant § 384.

3 Am. Jur. 2d, Mortgages § 1.

4 Chavez v. De Bergere, 231 U.S. 482, 34 S. Ct. 144, 58 L. Ed. 325 (1913); Bernard v. Benson, 58 Wash. 191, 108 P. 439 (1910).

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I. In General

A. Definitions and Distinctions

§ 5. Distinction between deeds and wills

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 5

West's Key Number Digest, Wills 88(.5), 88(1)

A.L.R. Library

Validity of option to purchase realty as affected by indefiniteness of term provided for exercise, 31 A.L.R.3d 522

Whether an instrument is a deed or a will depends primarily on its operation and not on its form or manner of execution.[1] The essential characteristic of a testamentary instrument is that it operates only upon and by reason of the death of the maker; prior to the date of the testator's death, a will is merely the expression of an intention to dispose of one's property in a certain way in the future provided one does not have a change of mind.[2] In order that an instrument may be operative as a deed, it must pass a present interest although it is not necessary that the grantee take a present estate in the property conveyed. Accordingly, where a provision in an instrument in the form of a deed, postponing its taking effect until after the death of the grantor, is construed as passing a present interest in the grantee, the instrument is a deed[3] in the absence of statutory provision that the instrument will operate as a will.[4] Where, however, the provision in an instrument, postponing its effect until after the death of the grantor, is construed as passing an interest not to take effect until the death of the maker, the instrument is testamentary notwithstanding that in form it may be a deed.[5] Under such an instrument, the maker is not deprived of the right of revoking the instrument; it is revocable and ambulatory and hence is testamentary in character.[6] Wills and deeds are distinguished by the power of revocation residing in the maker in the case of a will, whereas a deed once executed and delivered is irrevocable[7] in the absence of the reservation of the right to revoke.[8]

Footnotes

1 Blackwell v. Lee, 1932 OK 549, 160 Okla. 73, 15 P.2d 574 (1932).
As to the construction of an instrument as a deed or a will, see §§ 212 to 223.

2 Am. Jur. 2d, Wills § 1.

3 Lindsey v. Christian, 222 Ark. 169, 257 S.W.2d 935 (1953); Martin v. Smith, 211 Ga. 600, 87 S.E.2d 406 (1955); Bowie v. Bowie, 208 Md. 623, 119 A.2d 436 (1956); Beauchamp v. Beauchamp, 381 S.W.2d 804 (Mo. 1964); Terrell v. Graham, 576 S.W.2d 610 (Tex. 1979).

4 Collier v. Carter, 146 Ga. 476, 91 S.E. 551, 11 A.L.R. 1 (1917).

5 Kelly v. Bank of America Nat. Trust & Savings Ass'n, 112 Cal. App. 2d 388, 246 P.2d 92, 34 A.L.R.2d 578 (4th Dist. 1952); Smith v. Thomas, 199 Ga. 396, 34 S.E.2d 278 (1945); White v. Inman, 212 Miss. 237, 54 So. 2d 375, 30 A.L.R.2d 380 (1951); Atchison v. Atchison, 1946 OK 358, 198 Okla. 98, 175 P.2d 309 (1946); Trumbauer v. Rust, 36 S.D. 301, 154 N.W. 801, 11 A.L.R. 10 (1915).

6 Collier v. Carter, 146 Ga. 476, 91 S.E. 551, 11 A.L.R. 1 (1917); Heaston v. Kreig, 167 Ind. 101, 77 N.E. 805 (1906); Wimpey v. Ledford, 177 S.W. 302, 11 A.L.R. 7 (Mo. 1915).

7 McReynolds v. McReynolds, 147 Mont. 476, 414 P.2d 531 (1966).

8 Eaton v. Husted, 141 Tex. 349, 172 S.W.2d 493 (1943).

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I. In General

B. Other General Considerations

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I. In General

B. Other General Considerations

§ 6. Purpose of deed; necessity

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 3

The purpose of a deed is to pass title to land.[1] There must be a written instrument.[2] The appropriate method of making a voluntary transfer of real property in the lifetime of the grantor is by deed.[3]

A deed is not, however, the only method of acquiring title to realty. Title may also be acquired by operation of law, as where title is acquired by adverse possession[4] or descent,[5] or it may be acquired by will.[6]

Footnotes

1 Mitchell v. Nicholson, 71 N.D. 521, 3 N.W.2d 83, 139 A.L.R. 1175 (1942).

2 National Blvd. Bank of Chicago v. Citizens Utilities Co. of Illinois, 107 Ill. App. 3d 992, 63 Ill. Dec. 540, 438 N.E.2d 471 (1st Dist. 1982); McDaniel v. Carruth, 637 S.W.2d 498 (Tex. App. Corpus Christi 1982). As to the description of the property conveyed, see §§ 38 to 51.

3 Carr v. Frye, 225 Mass. 531, 114 N.E. 745 (1917); Lake v. Weaver, 76 N.J. Eq. 280, 74 A. 451 (Ct. Err. & App. 1909).

4 Am. Jur. 2d, Adverse Possession § 1.

5 Am. Jur. 2d, Descent and Distribution § 18.

6 Am. Jur. 2d, Wills § 1281.

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§ 7. What may be conveyed

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West's Key Number Digest

West's Key Number Digest, Deeds 7

A lawful subject matter is required for a deed to be effective.[1] Any interest in realty, either legal or equitable, may be conveyed by deed,[2] including a vested remainder.[3] One cannot convey an interest greater than one possesses in property,[4] and a conveyance of property is invalid to the extent the seller tries to convey an interest greater than he or she has.[5] One who does not hold title to property cannot pass or transfer title to that property.[6]

Minerals, including oil and gas, are usually regarded as being part of the realty, conveyable as such.[7] Timber trees may be transferred by deed, grant, or reservation as an estate separate from the land itself,[8] and an annuity may be created by deed.[9]

A title which has been gained by prescription may be conveyed and transferred by deed.[10]

CUMULATIVE SUPPLEMENT

Cases:

A grantor cannot convey what the grantor does not own. Nationstar Mortgage, LLC v. Goodman, 187 A.D.3d 1635, 133 N.Y.S.3d 704 (4th Dep't 2020).

[END OF SUPPLEMENT]

Footnotes

1 Lim v. Choi, 256 Va. 167, 501 S.E.2d 141 (1998).

2 Barribeau v. Brant, 58 U.S. 43, 17 How. 43, 15 L. Ed. 34, 1854 WL 7468 (1854).
As to the assignability of property rights, see Am. Jur. 2d, Assignments § 43.
As to an heir's assignment of his or her prospective inheritance, see Am. Jur. 2d, Assignments §§ 70, 71.
As to deeds transferring a vested interest acquired by intestate succession, see Am. Jur. 2d, Descent and Distribution § 148.

3 In re Marriage of Foreman, 1999 MT 89, 294 Mont. 181, 979 P.2d 193 (1999).

4 Youngs v. Old Ben Coal Co., 243 F.3d 387 (7th Cir. 2001) (applying Indiana law); Bald Mountain Park, Ltd. v. Oliver, 863 F.2d 1560 (11th Cir. 1989) (applying Georgia law); Hotshoe Enterprises, LLC v. City of Hartford, 50 Conn. Supp. 476, 939 A.2d 641 (Super. Ct. 2006), judgment aff'd, 284 Conn. 833, 937 A.2d 689 (2008); Tarason v. Wesson Realty, LLC, 2012 ME 47, 40 A.3d 1005 (Me. 2012); Cummings v. Varn, 307 S.C. 37, 413 S.E.2d 829 (1992); See v. Hennigar, 151 Wash. App. 669, 213 P.3d 941 (Div. 3 2009), as corrected, (Oct. 6, 2009).

5 Youngs v. Old Ben Coal Co., 243 F.3d 387 (7th Cir. 2001) (applying Indiana law).

6 FH Partners, LLC v. Complete Home Concepts, Inc., 378 S.W.3d 387 (Mo. Ct. App. W.D. 2012); In re New Creek Bluebelt, Phase 4. City of New York, 79 A.D.3d 888, 917 N.Y.S.2d 203 (2d Dep't 2010), leave to appeal dismissed, 16 N.Y.3d 825, 921 N.Y.S.2d 185, 946 N.E.2d 174 (2011); Manusos v. Skeels, 238 Or. App. 657, 243 P.3d 491 (2010), review denied, 350 Or. 130, 250 P.3d 922 (2011); Watson v. Tipton, 274 S.W.3d 791 (Tex. App. Fort Worth 2008).

7 Am. Jur. 2d, Gas and Oil §§ 2, 50 to 58; Am. Jur. 2d, Mines and Minerals §§ 181 to 184.

8 Am. Jur. 2d, Logs and Timber § 11.

9 Am. Jur. 2d, Annuities § 5.

10 Keith v. Kennard, 222 Mass. 398, 110 N.E. 1030 (1916).
As to the distinction between prescription and adverse possession, see Am. Jur. 2d, Adverse Possession § 8.

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I. In General

B. Other General Considerations

§ 8. Property right in title deeds

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 1, 3

A.L.R. Library

Nature of property or rights other than tangible chattels which may be subject of conversion, 44 A.L.R.2d 927

A title deed is subject to conversion and is recoverable by the person who is entitled to hold it[1] by the usual actions available for the recovery of personal property.[2] Real estate is not, however, subject to conversion.[3]

Footnotes

1 Las Mendozas, Inc. v. Powell, 368 F.2d 445 (5th Cir. 1966) (applying Texas law); Ming Hin Chin v. Fletcher, 21 Misc. 2d 421, 191 N.Y.S.2d 601 (Sup 1959).

2 Am. Jur. 2d, Conversion § 16; Am. Jur. 2d, Replevin § 8.

3 Am. Jur. 2d, Conversion § 15.

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I. In General

B. Other General Considerations

§ 9. What law governs

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West's Key Number Digest

West's Key Number Digest, Deeds 1

From the standpoint of time, the law in effect at the time of the execution of a deed governs its validity and interpretation.[1]

Matters pertaining to the validity of conveyances of real property are governed by the law of the situs of the property.[2]

Footnotes

1 Arkansas Presbytery of Cumberland Presbyterian Church v. Hudson, 344 Ark. 332, 40 S.W.3d 301 (2001); Elder v. Delcour, 364 Mo. 835, 269 S.W.2d 17, 47 A.L.R.2d 370 (1954); Dell v. City of Lincoln, 170 Neb. 176, 102 N.W.2d 62 (1960); Gajewski v. Bratcher, 221 N.W.2d 614, 81 A.L.R.3d 211 (N.D. 1974); Messner v. Moorehead, 1990 OK 17, 787 P.2d 1270 (Okla. 1990).
As to the time as of which a grantor's capacity to execute a deed is determined, see § 23.
As to the time as of which a deed becomes operative, including the question whether it relates back, see §§ 271 to 295.

2 Chevy Chase Land Co. of Montgomery County, Md. v. U.S., 37 Fed. Cl. 545 (1997), judgment aff'd, 230 F.3d 1375 (Fed. Cir. 1999), amended, (Mar. 27, 2000); Estate of Lampert Through Thurston v. Estate of Lampert Through Stauffer, 896 P.2d 214 (Alaska 1995); Gabrielian v. Gabrielian, 473 A.2d 847 (D.C. 1984); Preston v. APCH, Inc., 89 A.D.3d 65, 930 N.Y.S.2d 722 (4th Dep't 2011); Matter of Estate of Erickson, 368 N.W.2d 525 (N.D. 1985); South Carolina Dept. of Parks, Recreation, and Tourism v. Brookgreen Gardens, 309 S.C. 388, 424 S.E.2d 465 (1992).
As to conflict of laws principles relating to conveyances of real property, generally, see Am. Jur. 2d, Conflict of Laws §§ 27 to 30.

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II. Methods of Conveyancing

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II. Methods of Conveyancing

§ 10. Quitclaim

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 25, 121

Forms

Am. Jur. Legal Forms 2d § 87:14 (Quitclaim deed)

Quitclaim deeds are commonly used to convey interests of an unknown extent or claims having a dubious basis.[1] To the extent the grantor holds good title to the property,[2] for purposes of conveying title, a quitclaim deed is as effective as any other deed.[3]

A quitclaim is a deed intended to pass any title, interest, or claim which the grantor may have in the premises but not professing that such title is valid.[4] In fact, a quitclaim deed does not import that the grantor has any interest at all.[5] It conveys nothing more than what the grantor owns.[6] An essential characteristic of a quitclaim deed is that it contains no warranties or covenants by the grantor.[7]

A quitclaim deed expresses upon its face doubts about the grantor's interest, and any buyer is necessarily put on inquiry as to those doubts; thus, ordinarily, a quitclaim deed without warranty of title cannot be a warranty or misrepresentation of title.[8] The operative words of a quitclaim deed are "conveys and quitclaims."[9]

Footnotes

1 Geodyne Energy Income Production Partnership I-E v. Newton Corp., 161 S.W.3d 482 (Tex. 2005).

2 Bradford v. Brady, 85 So. 3d 399 (Ala. Civ. App. 2011), cert. denied, (Dec. 9, 2011).

3 Celtic Corp. v. Tinnea, 254 S.W.3d 137 (Mo. Ct. App. E.D. 2008).

4 Thompson v. U.S., 101 Fed. Cl. 416 (2011).

As to the interest conveyed by a quitclaim deed, see § 277.

5 R & R Land Development, L.L.C. v. American Freightways, Inc., 389 S.W.3d 234 (Mo. Ct. App. S.D. 2012), reh'g and/or transfer denied, (Jan. 7, 2013) and transfer denied, (Mar. 19, 2013).

6 Lindy Lu LLC v. Illinois Cent. R. Co., 2013 IL App (3d) 120,337; Bradford v. Brady, 85 So. 3d 399 (Ala. Civ. App. 2011), cert. denied, (Dec. 9, 2011); Layne v. Layne, 74 So. 3d 161 (Fla. 1st DCA 2011); Turner v. Wells Fargo Bank, N.A., 2012 MT 213, 366 Mont. 285, 291 P.3d 1082 (2012); Carkuff v. Balmer, 2011 ND 60, 795 N.W.2d 303 (N.D. 2011); Holladay Towne Center, L.L.C. v. Brown Family Holdings, L.L.C., 2011 UT 9, 248 P.3d 452 (Utah 2011).

7 Lindy Lu LLC v. Illinois Cent. R. Co., 2013 IL App (3d) 120,337; R & R Land Development, L.L.C. v. American Freightways, Inc., 389 S.W.3d 234 (Mo. Ct. App. S.D. 2012), reh'g and/or transfer denied, (Jan. 7, 2013) and transfer denied, (Mar. 19, 2013).

8 Geodyne Energy Income Production Partnership I-E v. Newton Corp., 161 S.W.3d 482 (Tex. 2005).

9 Newport Yacht Basin Ass'n of Condominium Owners v. Supreme Northwest, Inc., 168 Wash. App. 56, 277 P.3d 18 (Div. 1 2012).

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§ 11. Confirmation deed

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West's Key Number Digest, Deeds 43

Forms

Am. Jur. Legal Forms 2d § 87:33 (Confirmation deed—Ratification of prior deed executed by agent)
Am. Jur. Legal Forms 2d § 87:34 (Confirmation deed—Ratification of deed executed under possible disability)
Am. Jur. Legal Forms 2d § 87:35 (Confirmation deed—Correction of mistakes in prior deed)

The purpose of a correction deed is to admit mutual error and change the original instrument to conform to the true intent of the parties.[1] A mistake in the omission of parties may be corrected by a deed of correction to effectuate the intention of the parties.[2]

Footnotes

1 Neblett v. Placid Oil Co., 257 So. 2d 167 (La. Ct. App. 3d Cir. 1971).

2 Cox v. Tanner, 229 S.C. 568, 93 S.E.2d 905 (1956).

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III. Formal Requisites

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III. Formal Requisites

§ 12. Generally

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West's Key Number Digest, Deeds 26

Forms

Am. Jur. Legal Forms 2d § 87:4 (Form drafting guide—Checklist—Matters to consider in drafting a deed)
Am. Jur. Legal Forms 2d § 87:5 (Formal requirements)

If a grantor and a grantee can be determined from the whole of the instrument, and the document is signed and acknowledged by the grantor, then the document accomplishes a legally effective "conveyance."[1] A deed must be drawn in such language as to indicate who is granting the property, to whom it is granted, and what the property is,[2] and it is usual for the conveyancer to set forth what the deed is intended to express in some formal manner.[3] Title to real estate may be conveyed in a trust instrument, and the fact that the instrument is not captioned "deed" does not deprive it of legal effect as a conveyance of real estate provided it is otherwise valid as such a conveyance.[4]

It is not essential to the validity of an instrument as a deed, or to make it operative to pass title to land, that it follow any exact or prescribed form of words provided the intention to convey is expressed.[5] Formality and exactness are not required.[6] It is sufficient if the matter written is set forth in an orderly manner by words which clearly specify the agreement and meaning of the parties and bind them.[7]

A deed may refer to another deed for its terms.[8]

Footnotes

1 Pride Exploration, Inc. v. Marshall Exploration, Inc., 798 F.2d 864 (5th Cir. 1986) (applying Texas law).

2 Duffield v. Duffield, 268 Ill. 29, 108 N.E. 673 (1915).
As to the designation of parties, see §§ 25 to 31.

3 Deslauriers v. Senesac, 331 Ill. 437, 163 N.E. 327, 62 A.L.R. 511 (1928).
As to the form of deed to which the purchaser is entitled under the contract, see Am. Jur. 2d, Vendor and Purchaser § 229.

4 Matter of Estate of Severson, 459 N.W.2d 473 (Iowa 1990).

5 Meairs v. Kruckenberg, 171 Kan. 450, 233 P.2d 472, 31 A.L.R.2d 525 (1951); Lim v. Choi, 256 Va. 167, 501 S.E.2d 141 (1998).

6 Bamber v. Bamber, 216 So. 2d 806 (Fla. 3d DCA 1968); Babb v. Dowdy, 229 Ky. 767, 17 S.W.2d 1014 (1929).

7 Bamber v. Bamber, 216 So. 2d 806 (Fla. 3d DCA 1968); Babb v. Dowdy, 229 Ky. 767, 17 S.W.2d 1014 (1929); Riggs v. City of New Castle, 229 Pa. 490, 78 A. 1037 (1911).

8 Berry v. Marion County Lumber Co., 108 S.C. 108, 93 S.E. 328 (1917).
As to the description of property by reference to another instrument, see § 50.

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III. Formal Requisites

§ 13. Words of grant

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West's Key Number Digest

West's Key Number Digest, Deeds 36, 93

In order to transfer title, an instrument must contain apt words of grant[1] which manifest the grantor's intent to make a present conveyance of the land by the deed, as distinguished from an intention to convey it at some future time.[2] The granting clause of a deed determines the interest conveyed.[3] In some jurisdictions which employ both a granting clause and a habendum clause[4] the granting clause is said to actively transfer the land from the grantor to the grantees,[5] while the habendum clause describes the type of title that has been granted.[6] Rights in property of varying degrees may be created within the same grant.[7]

The absence of words of conveyance cannot be supplied,[8] and if no words importing a grant can be found in the deed, it is void although in other respects formal and regular.[9] However, no particular verbal formula is required to effect a present conveyance,[10] nor is it essential that technical terms be used.[11] If an intention to pass the title is disclosed, the court will give effect to such intention notwithstanding an inaccuracy of expression or inaptness of the words used.[12] Conversely, the presence of technical words of conveyance does not necessarily constitute an instrument a deed if it was not the intention of the parties that it operate as such.[13]

Footnotes

1 Lilly v. Earl, 463 So. 2d 143 (Ala. 1984); Davis v. Griffin, 298 Ark. 633, 770 S.W.2d 137 (1989); Bercot v. Velkoff, 111 Ind. App. 323, 41 N.E.2d 686 (1942); Sinclair Crude Oil Co. v. Oklahoma Tax Commission, 1958 OK 110, 326 P.2d 1051 (Okla. 1958); Lim v. Choi, 256 Va. 167, 501 S.E.2d 141 (1998).

2 Davis v. Griffin, 298 Ark. 633, 770 S.W.2d 137 (1989); Cordano v. Wright, 159 Cal. 610, 115 P. 227 (1911); Deslauriers v. Senesac, 331 Ill. 437, 163 N.E. 327, 62 A.L.R. 511 (1928); Cook v. Farley, 195 Miss. 638, 15 So. 2d 352 (1943); De Bergere v. Chaves, 14 N.M. 352, 93 P. 762 (1908), aff'd, 231 U.S. 482, 34 S. Ct. 144,

58 L. Ed. 325 (1913); New Home Bldg. Supply Co. v. Nations, 259 N.C. 681, 131 S.E.2d 425 (1963); Lim v. Choi, 256 Va. 167, 501 S.E.2d 141 (1998); Bernard v. Benson, 58 Wash. 191, 108 P. 439 (1910).

3 Miller v. Kloeckner, 1999 ND 190, 600 N.W.2d 881 (N.D. 1999); Griffith v. Cloud, 1988 OK 113, 764 P.2d 163 (Okla. 1988).

As to the construction of a deed to determine the interest conveyed, see §§ 227 to 241.

4 § 16.

5 Kipp v. Estate of Chips, 169 Vt. 102, 732 A.2d 127 (1999).

6 § 16.

7 Gilder v. Mitchell, 668 A.2d 879 (Me. 1995).

8 Pope v. Burgess, 230 N.C. 323, 53 S.E.2d 159 (1949).

9 Bercot v. Velkoff, 111 Ind. App. 323, 41 N.E.2d 686 (1942).

10 Carman v. Athearn, 77 Cal. App. 2d 585, 175 P.2d 926 (1st Dist. 1947); Dennen v. Searle, 149 Conn. 126, 176 A.2d 561 (1961); Lim v. Choi, 256 Va. 167, 501 S.E.2d 141 (1998); Mullinnix LLC v. HKB Royalty Trust, 2006 WY 14, 126 P.3d 909 (Wyo. 2006).

11 Bryant v. Fordyce, 147 Kan. 586, 78 P.2d 32 (1938); New Home Bldg. Supply Co. v. Nations, 259 N.C. 681, 131 S.E.2d 425 (1963).

12 Olson v. Cornwell, 134 Cal. App. 419, 25 P.2d 879 (1st Dist. 1933); Dennen v. Searle, 149 Conn. 126, 176 A.2d 561 (1961); Reid v. Barry, 93 Fla. 849, 112 So. 846 (1927); Allen v. Boykin, 199 Miss. 417, 24 So. 2d 748 (1946); Lim v. Choi, 256 Va. 167, 501 S.E.2d 141 (1998).

13 Taylor v. Burns, 203 U.S. 120, 27 S. Ct. 40, 51 L. Ed. 116 (1906); Riggs v. City of New Castle, 229 Pa. 490, 78 A. 1037 (1911).

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III. Formal Requisites

§ 14. Words of grant—Words of inheritance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 36

Under common law principles, when the word "heirs" has been omitted from a deed, the grantee receives only a life interest even though the deed expresses an intention to convey an interest of perpetual duration.[1] Although words of inheritance (such as to the grantee "and his heirs and assigns forever") are no longer necessary in most states[2] to pass a fee simple title,[3] the use of such words strengthens the reading of a deed to pass a fee simple title and not some amalgam of lesser estates.[4]

Footnotes

1 Gilder v. Mitchell, 668 A.2d 879 (Me. 1995).

2 Apel v. Katz, 83 Ohio St. 3d 11, 1998-Ohio-420, 697 N.E.2d 600 (1998).

3 Am. Jur. 2d, Estates § 21.

4 Jones v. Cox, 629 S.W.2d 511 (Mo. Ct. App. S.D. 1981).

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III. Formal Requisites

§ 15. Words of grant—Quitclaim deeds

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 36

The words "remise, release, and quitclaim," which are the customary operative words of quitclaim deeds, manifest the intention of the grantor to convey his or her present interest, whatever it may be, to the grantee.[1] Indeed, the words "remise, release, and quitclaim" have been held to be synonymous[2] so that it would seem that one or more of these words would be effective. However, it should be noted that use of the word "quitclaim" does not conclusively establish that the instrument is a quitclaim deed.[3]

Footnotes

1 Spreckels v. Brown, 212 U.S. 208, 29 S. Ct. 256, 53 L. Ed. 476 (1909); City of Manhattan Beach v. Superior Court, 13 Cal. 4th 232, 52 Cal. Rptr. 2d 82, 914 P.2d 160 (1996); Simonds v. Simonds, 199 Mass. 552, 85 N.E. 860 (1908); Bannard v. Duncan, 79 Neb. 189, 112 N.W. 353 (1907).

2 City of Manhattan Beach v. Superior Court, 13 Cal. 4th 232, 52 Cal. Rptr. 2d 82, 914 P.2d 160 (1996); Bannard v. Duncan, 79 Neb. 189, 112 N.W. 353 (1907).

3 § 226.

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III. Formal Requisites

§ 16. Habendum

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 90, 95

In formal deeds, the habendum is that part of the deed, usually following the premises, which sets forth the estate to be held and enjoyed by the grantee.[1] The purpose of the habendum clause of a deed is to curtail, limit, or qualify the estate conveyed in the granting clause[2] or the premises.[3] The habendum is no longer an essential part of a deed in many jurisdictions.[4] Where the estate is clearly defined in the granting clause of the premises, there is no necessity for a habendum.[5]

Footnotes

1 In re Fleck's Estate, 261 Iowa 434, 154 N.W.2d 865 (1967); Henningsen v. Stromberg, 124 Mont. 185, 221 P.2d 438 (1950); State, Dept. of Roads v. Union Pacific R. Co., 241 Neb. 675, 242 Neb. 97, 490 N.W.2d 461 (1992), opinion modified, (Dec. 24, 1992); Kipp v. Estate of Chips, 169 Vt. 102, 732 A.2d 127 (1999); Realty Securities & Discount Co. v. National Rubber & Leather Co., 122 W. Va. 21, 7 S.E.2d 49 (1940).

2 Dansie v. Hi-Country Estates Homeowners Ass'n, 1999 UT 62, 987 P.2d 30 (Utah 1999); Kipp v. Estate of Chips, 169 Vt. 102, 732 A.2d 127 (1999).

3 Bryant v. Shields, 220 N.C. 628, 18 S.E.2d 157 (1942).

4 Realty Securities & Discount Co. v. National Rubber & Leather Co., 122 W. Va. 21, 7 S.E.2d 49 (1940); Flynn v. Palmer, 270 Wis. 43, 70 N.W.2d 231, 51 A.L.R.2d 1000 (1955).

5 Realty Securities & Discount Co. v. National Rubber & Leather Co., 122 W. Va. 21, 7 S.E.2d 49 (1940).

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III. Formal Requisites

§ 17. Reddendum; reservations and exceptions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 137, 138

In formal deeds, the habendum is followed by the clause of reddendum, which in feudal times was employed to set forth the military or other services to be rendered by the grantee and which is now used to effect a reservation of an estate in the land previously granted, as, for instance, a life estate.[1] Its detraction from the estate granted in the premises is not regarded as a repugnance.[2] Both clauses are deemed to be of equal dignity and are read together and allowed effect and operation, the latter limiting and modifying the former so as to effectuate the intent of the grantor as disclosed by the whole instrument.[3] The reddendum creates and defines and is equal in dignity and virtue with the premises. The space or position usually accorded to the reddendum may be used by a clause excepting a separable thing from the premises or granting clause of the deed,[4] and an exception so made is not repugnant to the grant unless the two are irreconcilable.[5]

Footnotes

1 Freudenberger Oil Co. v. Simmons, 75 W. Va. 337, 83 S.E. 995 (1914).

2 § 206.

3 Freudenberger Oil Co. v. Simmons, 75 W. Va. 337, 83 S.E. 995 (1914).

4 Freudenberger Oil Co. v. Simmons, 75 W. Va. 337, 83 S.E. 995 (1914).

5 § 63.

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III. Formal Requisites

§ 18. Date

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 26

The date of the deed, containing the day, month, and year of its execution, is one of the formal parts of a deed but is not essential to its validity.[1] The operative effect of a deed is in no way affected by the fact that it is undated,[2] nor is it defeated because the acknowledgment is undated[3] or dated incorrectly.[4] The deed operates from the time of delivery; the date it bears merely raises a presumption that it was delivered then.[5]

Footnotes

1 Sterling v. Park, 129 Ga. 309, 58 S.E. 828 (1907); Eld v. Ellis, 235 S.W.2d 273 (Mo. 1950).

2 Harvey v. Ledbetter, 219 Ark. 27, 240 S.W.2d 18 (1951); Spero v. Bove, 116 Vt. 76, 70 A.2d 562 (1950).

3 Spero v. Bove, 116 Vt. 76, 70 A.2d 562 (1950).
As to the effect of an irregularity in the date of acknowledgment, see Am. Jur. 2d, Acknowledgments § 35.

4 Gulf Land & Development Co. v. McRaney, 197 So. 2d 212 (Miss. 1967).

5 § 271.

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IV. Parties

A. In General

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West's Key Number Digest

West's Key Number Digest, Deeds 11, 13, 31, 136

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IV. Parties

A. In General

§ 19. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 11

A transaction involving the transfer of title to real estate presupposes the participation of two or more parties—that is, a grantor and a grantee.[1] In order that an instrument may operate as a deed conveying land or an interest or estate therein, there must be both a grantor and a grantee.[2]

Footnotes

1 Deslauriers v. Senesac, 331 Ill. 437, 163 N.E. 327, 62 A.L.R. 511 (1928).

2 Deslauriers v. Senesac, 331 Ill. 437, 163 N.E. 327, 62 A.L.R. 511 (1928); Hogsed v. Gillett, 60 Mont. 467, 199 P. 907 (1921); Sullivan v. Buckhorn Ranch Partnership, 2005 OK 41, 119 P.3d 192 (Okla. 2005); Allgood v. Allgood, 134 S.C. 233, 132 S.E. 48 (1926); City Bank of Portage v. Plank, 141 Wis. 653, 124 N.W. 1000 (1910).

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IV. Parties

A. In General

§ 20. As separate entities

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 11, 136

While a corporation may convey to one of its stockholders,[1] ordinarily one person cannot occupy, at law, at the same time, the position of both grantor and grantee in regard to the same property.[2] Just as it is impossible for one to deliver possession to oneself, it is impossible for one to convey by deed to oneself what that person already possesses.[3] If a person holds the fee and desires to reduce the quantum of the held estate, the proper mode of doing this is to convey to another reserving to himself or herself the estate such person desires to hold.[4] However, in conformity with the trend to permit the intention of the parties to override formalistic objections,[5] grantors who are tenants in common may effectively create a joint tenancy with survivorship by means of a deed running to themselves as grantees.[6]

Footnotes

1 Am. Jur. 2d, Corporations § 635.

2 Strout v. Burgess, 144 Me. 263, 68 A.2d 241, 12 A.L.R.2d 939 (1949).

3 Deslauriers v. Senesac, 331 Ill. 437, 163 N.E. 327, 62 A.L.R. 511 (1928); Strout v. Burgess, 144 Me. 263, 68 A.2d 241, 12 A.L.R.2d 939 (1949).

4 §§ 59 to 71.

5 § 193.

6 Haynes v. Barker, 239 S.W.2d 996 (Ky. 1951).

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IV. Parties

A. In General

§ 21. Necessity that grantee be a person in existence

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 13, 31

In order that an instrument may be operative as a deed conveying title to, or interest or estate in, land, the grantee named in the deed must be a person, natural or artificial, in existence at the time of conveyance[1] and capable of taking title.[2] A deed granting an immediate estate to a person not in existence is inoperative to transfer the legal estate[3] though such deed is valid between the grantor and the grantee under principles of equity.[4] The deed is void, however, when asserted against third parties.[5]

A deed to a fictitious grantee, or which names as grantee a person who has no existence, is inoperative and void.[6] However, a deed to an existing person as grantee who is described by a fictitious or assumed name is valid.[7]

Footnotes

1 Roeckl v. F.D.I.C., 885 P.2d 1067 (Alaska 1994); Buckeye Retirement Co., LLC., LTD v. Walter, 2012 Ark. App. 257, 2012 WL 1327830 (2012); Duffield v. Duffield, 268 Ill. 29, 108 N.E. 673 (1915); Stone v. Jetmar Properties, LLC, 733 N.W.2d 480, 43 A.L.R.6th 813 (Minn. Ct. App. 2007); Allen v. Scott, Hewitt and Mize, L.L.C., 186 S.W.3d 782 (Mo. Ct. App. W.D. 2006) (noting, however, that equitable rights may result in favor of a subsequently formed corporation named as grantee); Sullivan v. Buckhorn Ranch Partnership, 2005 OK 41, 119 P.3d 192 (Okla. 2005); Wilson v. Dearing, Inc., 415 S.W.2d 475 (Tex. Civ. App. Eastland 1967); Sharp v. Riekhof, 747 P.2d 1044 (Utah 1987).

2 § 24.

3 Rixford v. Zeigler, 150 Cal. 435, 88 P. 1092 (1907); Community Credit Union Services, Inc. v. Federal Exp. Services Corp., 534 A.2d 331 (D.C. 1987); Belcher Center LLC v. Belcher Center, Inc., 883 So. 2d 338 (Fla. 2d DCA 2004); Davis v. Hollingsworth, 113 Ga. 210, 38 S.E. 827 (1901); Dick v. Ricker, 222 Ill. 413, 78

N.E. 823 (1906); Sullivan v. Buckhorn Ranch Partnership, 2005 OK 41, 119 P.3d 192 (Okla. 2005); Allgood v. Allgood, 134 S.C. 233, 132 S.E. 48 (1926).

A deed is void if the named grantee is not a legal entity. Uznay v. Bevis, 139 Wash. App. 359, 161 P.3d 1040 (Div. 1 2007).

As to a deceased grantee, see § 22.

4 Community Credit Union Services, Inc. v. Federal Exp. Services Corp., 534 A.2d 331 (D.C. 1987).

5 Community Credit Union Services, Inc. v. Federal Exp. Services Corp., 534 A.2d 331 (D.C. 1987).

6 Alvestad v. Monsanto Co., 459 U.S. 1070, 103 S. Ct. 489, 74 L. Ed. 2d 632 (1982); State of Or. By and Through Div. of State Lands v. Bureau of Land Management, Dept. of the Interior, U.S., 876 F.2d 1419, 54 Ed. Law Rep. 430 (9th Cir. 1989) (applying Oregon law).

7 § 29.

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IV. Parties

A. In General

§ 22. Necessity that grantee be a person in existence—Deceased grantee

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 13

A grant to a deceased person or to the estate of a deceased person is void at common law for want of a grantee in being and capable of taking the estate conveyed; and no title passes thereunder to the heirs or devisees of the deceased person.[1] While a deed to a designated person or that person's heirs is effective if such person is dead at the time of the deed because the person's heirs at that time can be established with certainty,[2] a deed to a certain person, who is then deceased, and the person's heirs, is inoperative for want of a grantee, the word "heirs," in such case, being held to be used by way of limitation only—that is, as indicating the nature of the estate that such designated person was to have.[3]

In some jurisdictions, the rule that a grant to a deceased person is void applies only to the legal estate and has no application to the equitable rights of the parties growing out of such conveyance, and this principle is applied in giving effect to such equitable rights.[4] A deed made to the heirs or assigns of a dead person is valid if it can be shown that it was the grantor's intention to convey title to such heirs or assigns.[5] A deed to the estate of a deceased person is valid where surrounding circumstances, including that the grantor knew of the death of the grantee and that the deceased person's beneficiaries were clearly known and undisputed at the time the grantor executed deed, indicate that the grantor intended that result.[6]

Footnotes

1 U.S. v. Stubbs, 776 F.2d 1472 (10th Cir. 1985) (applying Utah law); Holder v. Elmwood Corporation, 231 Ala. 411, 165 So. 235 (1936); McCollum v. Loveless, 185 Ga. 748, 196 S.E. 430 (1938); Baker v. Lane, 82 Kan. 715, 109 P. 182 (1910); Hopkins v. Slusher, 266 Ky. 300, 98 S.W.2d 932, 108 A.L.R. 662 (1936); In re Reason's Estate, 276 Mich. 376, 267 N.W. 863 (1936); Stone v. Jetmar Properties, LLC, 733 N.W.2d 480, 43 A.L.R.6th 813 (Minn. Ct. App. 2007); Life Ins. Co. of Virginia v. Page, 178 Miss. 287, 172 So. 873

(1937); Allgood v. Allgood, 134 S.C. 233, 132 S.E. 48 (1926); Sparks v. Humble Oil & Refining Co., 129 S.W.2d 468 (Tex. Civ. App. Texarkana 1939), writ refused; City Bank of Portage v. Plank, 141 Wis. 653, 124 N.W. 1000 (1910); Black v. Beagle, 59 Wyo. 268, 140 P.2d 594 (1943).

2 Haile v. Holtzclaw, 414 S.W.2d 916 (Tex. 1967).

3 Baker v. Lane, 82 Kan. 715, 109 P. 182 (1910); James v. James, 77 W. Va. 229, 87 S.E. 364 (1915).

4 Fisher v. Standard Inv. Co., 145 Neb. 80, 15 N.W.2d 355 (1944); Black v. Beagle, 59 Wyo. 268, 140 P.2d 594 (1943).

5 Wilson v. Dearing, Inc., 415 S.W.2d 475 (Tex. Civ. App. Eastland 1967).

6 U.S. v. Stubbs, 776 F.2d 1472 (10th Cir. 1985) (applying Utah law).

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IV. Parties

B. Competency and Capacity of Parties

Topic Summary | Correlation Table

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West's Key Number Digest, Deeds 12, 13, 68

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IV. Parties

B. Competency and Capacity of Parties

§ 23. Grantor

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 12, 68

In the absence of incapacity arising from the law of the situs or restrictions on alienation imposed by a donor of land,[1] an owner of land has full dispositive power over it.[2] Thus, a competent grantor is essential for a proper deed.[3] When it can be established that a grantor lacked legal capacity to make a conveyance, such grantor's purported deed may be avoided and set aside or regarded as null and of no consequence in law.[4] One who lacks testamentary capacity also lacks the necessary capacity to execute a deed.[5] A deed may be deemed invalid and cancelled in equity on the ground of mental incapacity if the grantor is shown to be entirely without an understanding of the deed at the time of execution.[6] A deed made while under undue influence or under mental disability, absent an adjudication of incapacity, is voidable only, not void.[7]

In judging a grantor's capacity to execute a deed, the point of time to be considered is the time of the execution of the deed.[8] If it clearly appears that when the instrument was executed the grantor had the capacity to understand his or her actions, knew the nature and extent of the property dealt with and what he or she proposed to do with it, and had the capacity to decide intelligently whether or not he or she intended to make the conveyance, it cannot be found that the grantor was incompetent to execute the instrument.[9] In the absence of countervailing proof, the law raises a presumption of sanity and competency if the grantor is an adult.[10] A grantor who has the ability to read and understand a deed but fails to do so is normally bound by that deed.[11]

A deed may be set aside where there is a great disparity of mental ability between the parties coupled with an inadequacy of consideration[12] though weakness of intellect alone does not rise to the level of a total lack of capacity.[13]

A deed that is void due to lack of authority for the transfer cannot convey title to property even to a good faith purchaser for value.[14]

Footnotes

1 Am. Jur. 2d, Perpetuities and Restraints on Alienation §§ 100 to 112.

2 McLeod v. McLeod, 145 Ala. 269, 40 So. 414 (1906); Coblentz v. Putifer, 87 Kan. 719, 125 P. 30 (1912); Slorby v. Johnson, 530 N.W.2d 307 (N.D. 1995).

3 Faulkner v. Walters, 661 So. 2d 227 (Ala. 1995); Curl By and Through Curl v. Key, 311 N.C. 259, 316 S.E.2d 272 (1984); Weir by Gasper v. Estate of Ciao, 521 Pa. 491, 556 A.2d 819 (1989); Hudson v. Leopold, 288 S.C. 194, 341 S.E.2d 137 (1986); Lim v. Choi, 256 Va. 167, 501 S.E.2d 141 (1998).
A joint tenant's incompetence rendered the conveyance of her interest in the property invalid. In re Estate of Johnson, 739 N.W.2d 493 (Iowa 2007).

4 Faulkner v. Walters, 661 So. 2d 227 (Ala. 1995); Bowden v. Grindle, 675 A.2d 968 (Me. 1996); Weir by Gasper v. Estate of Ciao, 521 Pa. 491, 556 A.2d 819 (1989).

5 Matter of Guardianship and Conservatorship of Estate of Tennant, 220 Mont. 78, 714 P.2d 122 (1986).

6 Hansford v. Robinson, 255 Ga. 530, 340 S.E.2d 614 (1986).

7 First Interstate Bank of Sheridan v. First Wyoming Bank, N.A. Sheridan, 762 P.2d 379 (Wyo. 1988).

8 Rose v. Dunn, 284 Ark. 42, 679 S.W.2d 180 (1984); Butler v. Harrison, 578 A.2d 1098 (D.C. 1990); Severi v. Neville, 361 So. 2d 786 (Fla. 4th DCA 1978); Gomboy v. Mitchell, 57 A.D.2d 916, 395 N.Y.S.2d 55 (2d Dep't 1977); Runge v. Moore, 196 N.W.2d 87 (N.D. 1972); Smith v. Smith, 607 S.W.2d 617 (Tex. Civ. App. Waco 1980).

9 Benell v. Ross, 19 Neb. App. 514, 808 N.W.2d 657 (2012), review denied, (June 13, 2012).

10 Gomboy v. Mitchell, 57 A.D.2d 916, 395 N.Y.S.2d 55 (2d Dep't 1977).

11 Popwell v. Greene, 465 So. 2d 384 (Ala. 1985); Dunn v. Dunn, 786 So. 2d 1045 (Miss. 2001); Harper v. Rogers, 182 W. Va. 311, 387 S.E.2d 547 (1989).

12 Godwin v. Godwin, 265 Ga. 891, 463 S.E.2d 685 (1995); In re Estate of Green, 755 So. 2d 1054 (Miss. 2000); Gilliland v. Carpenter, 183 W. Va. 356, 395 S.E.2d 779 (1990).
As to inadequacy of consideration, see § 77.

13 Slaick v. Arnold, 316 Ga. App. 141, 728 S.E.2d 782 (2012); In re Estate of Green, 755 So. 2d 1054 (Miss. 2000).

14 In re Lowbet Realty Corp., 38 Misc. 3d 589, 956 N.Y.S.2d 400 (Sup 2012).

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IV. Parties

B. Competency and Capacity of Parties

§ 24. Grantee

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 13, 68

A valid deed of conveyance requires a grantee in existence[1] who is legally capable of accepting the deed[2] and of taking and holding title to the property[3] at the date of delivery.[4] A conveyance to a deceased person or to the estate of such a person is inoperative and void for want of a grantee in being and capable of taking the estate conveyed.[5] A deed is inoperative where the corporate grantee is not yet in existence[6] although equitable rights may result in favor of a subsequently formed corporation named as grantee.[7]

Footnotes

1 § 21.

2 § 149.

3 Holder v. Elmwood Corporation, 231 Ala. 411, 165 So. 235 (1936); Rixford v. Zeigler, 150 Cal. 435, 88 P. 1092 (1907); In re Reason's Estate, 276 Mich. 376, 267 N.W. 863 (1936); Allmon v. Gatschet, 437 S.W.2d 70 (Mo. 1969); Curl By and Through Curl v. Key, 311 N.C. 259, 316 S.E.2d 272 (1984); Hudson v. Leopold, 288 S.C. 194, 341 S.E.2d 137 (1986); Sharp v. Riekhof, 747 P.2d 1044 (Utah 1987); Lim v. Choi, 256 Va. 167, 501 S.E.2d 141 (1998).
As to the right of associations and clubs to acquire and hold property, see Am. Jur. 2d, Associations and Clubs § 12.

4 Interstate Income Properties, Inc. v. La Jolla Loans, Inc., 2011 UT App 188, 257 P.3d 1073 (Utah Ct. App. 2011).
As to delivery, see §§ 102 to 148.

5 § 22.

6 Allmon v. Gatschet, 437 S.W.2d 70 (Mo. 1969).

7 Allmon v. Gatschet, 437 S.W.2d 70 (Mo. 1969).

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§ 25. Generally

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West's Key Number Digest

West's Key Number Digest, Deeds 11, 31

The grantor and the grantee in a deed should be so designated therein as to be identifiable with certainty.[1] When a conveyance is subscribed by more than one person and one of the signers' names is not shown in the granting clause or body of the instrument, such conveying instrument is void as to that person.[2] In the absence of statute, however, they may be designated by assumed or fictitious names, and the deed will be valid if the persons intended as the grantor and grantee can be identified.[3]

A declaration of residence of the parties to a deed may be entirely omitted from the deed without destroying its efficacy as a grant even though such omission may render it ineligible for recordation.[4]

Footnotes

1 Rixford v. Zeigler, 150 Cal. 435, 88 P. 1092 (1907); Milner v. Bivens, 255 Ga. 49, 335 S.E.2d 288 (1985); Allgood v. Allgood, 134 S.C. 233, 132 S.E. 48 (1926); City Bank of Portage v. Plank, 141 Wis. 653, 124 N.W. 1000 (1910).
As to the certainty of the designation of the parties in an agreement for the purchase and sale of land, see Am. Jur. 2d, Vendor and Purchaser § 6.

2 Manning v. Wingo, 577 So. 2d 865 (Ala. 1991).

3 § 29.

4 Glascoe v. Bracksieck, 85 N.W.2d 423 (N.D. 1957).

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§ 26. Of grantor, generally

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West's Key Number Digest

West's Key Number Digest, Deeds 31

To be valid, a deed must sufficiently describe or designate the person granting the land so as to identify such person as the grantor. The courts, however, are divided as to the necessity of naming the person in the premises of the deed as the grantor or whether it is sufficient if the person signs the deed. According to one view, a deed will not bind one who executes it unless he or she is named therein as grantor or the deed contains words indicating an intent to bind such person.[1] Where one or more persons are mentioned in the body of the conveyance as grantors and their names are subscribed to it but with the additional signature of another person who is nowhere mentioned, the instrument is not thereby made his deed.[2] A conveyance naming the beneficiaries of trust property, but not naming the trustee, does not pass title to the trust property.[3]

According to another view, effect may properly be given to the intent to convey notwithstanding the omission from the body of the deed of the grantor's name.[4]

Footnotes

1 Cordano v. Wright, 159 Cal. 610, 115 P. 227 (1911); Whitaker v. Langdon, 302 Ky. 666, 195 S.W.2d 285 (1946); Melton v. Sneed, 1940 OK 502, 188 Okla. 388, 109 P.2d 509 (1940); Young v. Magee, 196 S.W.2d 203 (Tex. Civ. App. Texarkana 1946), judgment aff'd, 145 Tex. 485, 198 S.W.2d 883 (1946).

2 Cordano v. Wright, 159 Cal. 610, 115 P. 227 (1911); Whitaker v. Langdon, 302 Ky. 666, 195 S.W.2d 285 (1946).

3 Jason v. Johnson, 74 N.J.L. 529, 67 A. 42 (N.J. Ct. Err. & App. 1907).

4 Sterling v. Park, 129 Ga. 309, 58 S.E. 828 (1907); Agar v. Streeter, 183 Mich. 600, 150 N.W. 160 (1914); Insurance Co. of Tennessee v. Waller, 116 Tenn. 1, 95 S.W. 811 (1906); York v. Stone, 178 Wash. 280, 34 P.2d 911 (1934).

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§ 27. Of grantee, generally

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West's Key Number Digest

West's Key Number Digest, Deeds 31

For a deed to serve as a successful conveyance, the grantee must be identifiable with certainty.[1] The essential requirement that an operative deed must designate in some manner an existing[2] person capable of taking title[3] is satisfied when a person has been named in the body of the deed, with words indicating that it was intended that such person should be the grantee, even though the name does not appear in the granting clause but only in the habendum[4] or in the acknowledgment of payment of consideration,[5] or elsewhere in the body of the deed.[6] Where the instrument refers to someone in such terms that there is no doubt that such person is the grantee, the deed will be effective although the person's name is not specifically stated as being the grantee.[7]

To pass title to the grantee intended, a deed need not describe the grantee by name if it otherwise identifies the grantee or makes the grantee susceptible of identification by extrinsic evidence.[8]

Use of the word "or" in designating the grantee does not create uncertainty invalidating the deed.[9]

Footnotes

1 Haney's Chapel United Methodist Church v. United Methodist Church, 716 So. 2d 1156 (Ala. 1998); Ford v. Reddick, 319 Ga. App. 482, 735 S.E.2d 809 (2012); Garraway v. Yonce, 549 So. 2d 1341, 56 Ed. Law Rep. 1352 (Miss. 1989).

2 § 21.

3 § 24.

4 Combs v. Combs, 292 Ky. 445, 166 S.W.2d 969 (1942); Freudenberger Oil Co. v. Simmons, 75 W. Va. 337, 83 S.E. 995 (1914).

5 Treece v. Treece, 212 Ark. 294, 205 S.W.2d 711, 175 A.L.R. 1290 (1947); Henniges v. Johnson, 9 N.D. 489, 84 N.W. 350 (1900).

6 Johnson v. Republic Steel Corp., 262 F.2d 108 (6th Cir. 1958).

7 Crouch v. Crouch, 241 Ark. 447, 408 S.W.2d 495 (1966); Henniges v. Johnson, 9 N.D. 489, 84 N.W. 350 (1900).

8 Crouch v. Crouch, 241 Ark. 447, 408 S.W.2d 495 (1966); Close v. O'Brien & Co., 135 Iowa 305, 112 N.W. 800 (1907); Hefner v. Cravens, 1941 OK 351, 189 Okla. 558, 118 P.2d 652 (1941).

9 Shulansky v. Michaels, 14 Ariz. App. 402, 484 P.2d 14 (Div. 1 1971); Dennen v. Searle, 149 Conn. 126, 176 A.2d 561 (1961).

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§ 28. Initials or abbreviated name; misnomer

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 31

A corporate name may be abbreviated so long as certainty of identity is preserved.[1] The omission of the grantee's first name[2] or of the grantee's middle name or surname[3] does not render the deed void if such grantee is identified by intrinsic or extrinsic evidence. Misnomer of the grantee will not invalidate the deed where some person in esse can be shown to be the person who was intended.[4] The misspelling of the grantee's name will not affect the validity of a subsequent deed by the grantee to a third person using the grantee's correctly spelled name.[5]

A deed to a married woman in her maiden name may be sufficient to vest title in her. In such a case parol evidence is admissible to show that the grantee was the person to whom the grant was made, that she was at the time of the grant known to the grantor by her maiden name, and that there was no other person claiming to bear the name used in the deed or claiming title under it.[6]

Footnotes

1 Christian v. Johnson, 556 S.W.2d 172 (Ky. Ct. App. 1977).

2 Taylor v. Danley, 83 Kan. 646, 112 P. 595 (1911).

3 Taylor v. Danley, 83 Kan. 646, 112 P. 595 (1911).

4 Walker v. Miller, 139 N.C. 448, 52 S.E. 125 (1905); City Bank of Portage v. Plank, 141 Wis. 653, 124 N.W. 1000 (1910).

5 Haye v. U.S., 461 F. Supp. 1168, 3 Fed. R. Evid. Serv. 391 (C.D. Cal. 1978).

6 Wheeler v. Wendleton, 209 Ark. 601, 191 S.W.2d 952 (1946).

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§ 29. Fictitious, assumed, or changed name

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 31

Forms

Am. Jur. Legal Forms 2d § 87:175 (Recital—Change of grantor's name—By marriage, divorce, or dissolution of marriage)
Am. Jur. Legal Forms 2d § 87:176 (Recital—Change of grantor's name—By court order)

Unless changed by statute, the common-law rule prevails that when an owner of land conveys by any name, the conveyance is effective to transfer title provided the grantor is identified as being the true owner.[1] A person who takes title to property in a name other than the person's true name assumes that name so far as the property conveyed is concerned, and having conveyed the property in the name by which the property is held, such person is estopped from asserting, as against the grantee and privies, that the conveyance is defective.[2]

Some jurisdictions by statute impose a requirement that a person holding title to real estate who afterward has a change in name must, in any conveyance of the same, set forth the name in which title was derived.[3] Where this is the case, a deed which does not set forth the name of the grantor prior to its change is inoperative to pass legal title.[4]

The rule that a deed which names as grantee a nonexistent person is void[5] applies only when the named grantee does not in fact exist and not to the situation where a person in existence is described by a fictitious or assumed name. If a living or legal person is identifiable as the grantee named in the deed, the deed is valid.[6]

Footnotes

1 Emery v. Kipp, 154 Cal. 83, 97 P. 17 (1908); Hartman v. Thompson, 104 Md. 389, 65 A. 117 (1906).
As to the effect of the acknowledgment as proving the identity of the grantor, see Am. Jur. 2d, Acknowledgments §§ 54 to 57.

2 Emery v. Kipp, 154 Cal. 83, 97 P. 17 (1908); Stratton v. McDermott, 89 Neb. 622, 131 N.W. 949 (1911).

3 Puccetti v. Girola, 20 Cal. 2d 574, 128 P.2d 13 (1942).

4 Puccetti v. Girola, 20 Cal. 2d 574, 128 P.2d 13 (1942).

5 § 21.

6 Roeckl v. F.D.I.C., 885 P.2d 1067 (Alaska 1994); Hartman v. Thompson, 104 Md. 389, 65 A. 117 (1906); Allgood v. Allgood, 134 S.C. 233, 132 S.E. 48 (1926); Marky Inv., Inc. v. Arnezeder, 15 Wis. 2d 74, 112 N.W.2d 211 (1961).

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IV. Parties

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§ 30. Designation by class or description; "heirs" of living person

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 31

A.L.R. Library

Benefit of direction in deed or will for payments by grantee or devisee to third person as surviving latter's death, and passing as part of his estate, 6 A.L.R.2d 363

Both the grantors and the grantees in a deed may be designated by recital or definition of a class to which they belong,[1] such as the heirs[2] of a deceased person who is named in the deed. Similarly, a grant may be made to the wife of a person named;[3] to the first son, second son, or to all the children of a certain person; or to a person by such person's name of office if there is no other person who can answer the description.[4] A conveyance in such terms is as effectual as if the name of the person so described had been given in full, and extrinsic evidence is admissible for the purpose of fitting the description to the person or persons intended.[5]

In the absence of a statute validating the conveyance, a deed or grant in which the grantees of a present estate are described as the "heirs" of a named living person is void for the reason that there are no persons in existence who can take under that description, it being impossible to ascertain during the life of a person who will be that person's heirs.[6] A conveyance of a present estate to the "heirs" of a living person may, however, confer a right in equity.[7]

A deed conveying land to a general group is void if there is no consistent or clear evidence regarding the exact meaning of the designation or the intent of the grantors.[8]

Footnotes

1 Stephens v. Perkins, 209 Ky. 651, 273 S.W. 545 (1925).
As to taking per stirpes or per capita under a deed, see § 236.

2 Stephens v. Perkins, 209 Ky. 651, 273 S.W. 545 (1925).

3 Byrd v. Patterson, 229 N.C. 156, 48 S.E.2d 45 (1948).

4 Byrd v. Patterson, 229 N.C. 156, 48 S.E.2d 45 (1948); Hefner v. Cravens, 1941 OK 351, 189 Okla. 558, 118 P.2d 652 (1941); York v. Stone, 178 Wash. 280, 34 P.2d 911 (1934).

5 Byrd v. Patterson, 229 N.C. 156, 48 S.E.2d 45 (1948).

6 Duffield v. Duffield, 268 Ill. 29, 108 N.E. 673 (1915); Shaw v. Arnett, 226 Minn. 425, 33 N.W.2d 609 (1948); Bennett v. Neff, 130 W. Va. 121, 42 S.E.2d 793 (1947).

7 Davis v. Hollingsworth, 113 Ga. 210, 38 S.E. 827 (1901); Fisher v. Southland Royalty Co., 270 S.W.2d 677 (Tex. Civ. App. Eastland 1954), writ refused n.r.e.

8 Haney's Chapel United Methodist Church v. United Methodist Church, 716 So. 2d 1156 (Ala. 1998) (conveyance to "This Community for a Union Church").

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§ 31. Identification of parties by extrinsic evidence

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Evidence 459(1)

A.L.R. Library

Admissibility of extrinsic evidence to identify person or persons intended to be designated by the name in which a contract is made, 80 A.L.R.2d 1137

Extrinsic evidence generally is admissible to identify the person or persons intended to be designated by the name used for the grantor[1] or the grantee in a deed.[2] At least when the uncertainty as to the intended grantee can be deemed a latent ambiguity,[3] it is susceptible of parol proof to explain the words of doubtful sense.[4] Extrinsic evidence is admissible to show who was intended as the grantee where two or more persons have the same name[5] and also where one person is known by more than one name.[6]

Footnotes

1 Preston v. Bush, 56 Tenn. App. 510, 408 S.W.2d 675 (1966).

2 Norton v. Larney, 266 U.S. 511, 45 S. Ct. 145, 69 L. Ed. 413 (1925); Hill v. Hill, 140 Idaho 812, 102 P.3d 1131 (2004); Alston v. Alston, 4 Ohio App. 2d 270, 33 Ohio Op. 2d 311, 212 N.E.2d 65 (10th Dist. Franklin County 1964); Preston v. Bush, 56 Tenn. App. 510, 408 S.W.2d 675 (1966).

3 Am. Jur. 2d, Evidence § 1146.

4 Preston v. Bush, 56 Tenn. App. 510, 408 S.W.2d 675 (1966).

5 Norton v. Larney, 266 U.S. 511, 45 S. Ct. 145, 69 L. Ed. 413 (1925); Wolff v. Elliott, 68 Ark. 326, 57 S.W. 1111 (1900); Winfield v. Saunders, 105 N.J.L. 580, 147 A. 537 (N.J. Ct. Err. & App. 1929).

6 Dunavant v. Pemiscot Land & Cooperage Co., 188 Mo. App. 83, 173 S.W. 747 (1915).

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D. Leaving Blank for Grantee's Name

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D. Leaving Blank for Grantee's Name

§ 32. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 32

An instrument purporting to be a deed, in which a blank has been left for the name of the grantee, is no deed and is inoperative as a conveyance so long as the blank remains unfilled.[1] Nevertheless, contractual liability under the deed is assumed by a grantee to whom the deed is delivered in pursuance of a contract for sale and purchase between the parties,[2] and the omission of the name of the grantee from a deed on delivery is not necessarily destructive of the conveyance. Thus, the rule is not applicable where the name of the grantee appears fully and clearly elsewhere on the face of the deed.[3] Equitable title passes by the delivery of a deed executed in blank as to the name of the grantee.[4]

Footnotes

1 Pearson v. Mullins, 1962 OK 57, 369 P.2d 825 (Okla. 1962); Burnham v. Eschler, 116 Utah 61, 208 P.2d 96 (1949).

2 Gilmore v. Shearer, 197 Iowa 506, 197 N.W. 631, 32 A.L.R. 733 (1924).

3 Treece v. Treece, 212 Ark. 294, 205 S.W.2d 711, 175 A.L.R. 1290 (1947); Prudential Ins. Co. of America v. Hunt, 206 N.C. 724, 175 S.E. 130 (1934).

4 In re Henderson's Estate, 128 Cal. App. 397, 17 P.2d 786 (3d Dist. 1932); Kindred v. Crosby, 251 Iowa 198, 100 N.W.2d 20 (1959).

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D. Leaving Blank for Grantee's Name

§ 33. Validity of insertion of grantee's name

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 32

A deed executed in blank as to the grantee will be valid and effective as a conveyance if the blank is filled in by the grantor, or by the grantor's duly authorized agents in accordance with the grantor's instructions, prior to or at the time of delivery.[1] Mere delay in filling the blank does not destroy the authority to insert the grantee's name.[2] If the duly authorized agent complies with the instructions in all respects, it is immaterial by whose hand the blank is filled.[3] A deed with the name of the grantee in blank may be filled in by the agent of the grantor, if within the scope of such agent's authority, even after delivery.[4]

Footnotes

1 Bryant v. Barger, 112 Ind. App. 17, 42 N.E.2d 429 (1942); Fulton v. McCullough, 232 Iowa 1220, 7 N.W.2d 910 (1943); Edmonson v. Waterston, 342 Mo. 1082, 119 S.W.2d 318 (1938); Montgomery v. Dresher, 90 Neb. 632, 134 N.W. 251 (1912); Scheer v. Stolz, 41 N.M. 585, 72 P.2d 606 (1937); Strange v. Maloney, 1936 OK 663, 178 Okla. 65, 61 P.2d 725 (1936); Barth v. Barth, 19 Wash. 2d 543, 143 P.2d 542 (1943).

2 Board of Educ. of City of Minneapolis v. Hughes, 118 Minn. 404, 136 N.W. 1095 (1912).

3 Guthrie v. Field, 85 Kan. 58, 116 P. 217 (1911); Wright v. Sconyers, 1931 OK 382, 150 Okla. 3, 300 P. 672, 75 A.L.R. 1098 (1931).

4 Wright v. Sconyers, 1931 OK 382, 150 Okla. 3, 300 P. 672, 75 A.L.R. 1098 (1931).

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D. Leaving Blank for Grantee's Name

§ 34. Validity of insertion of grantee's name—By grantee

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 32

In some jurisdictions, the validity of the deed is not affected by delivery to the grantee with a blank for the insertion of the grantee's name.[1] The effect of such a transaction is to vest an irrevocable power coupled with an interest in the person to whom the deed is delivered, and title passes with the delivery.[2] Where there is failure to fill in the blank, the instrument coupled with the authority to fill in the blank is sufficient to vest equitable title in the person to whom the deed is delivered.[3]

Footnotes

1 Kindred v. Crosby, 251 Iowa 198, 100 N.W.2d 20 (1959); Board of Educ. of City of Minneapolis v. Hughes, 118 Minn. 404, 136 N.W. 1095 (1912); Montgomery v. Dresher, 90 Neb. 632, 134 N.W. 251 (1912); Wright v. Sconyers, 1931 OK 382, 150 Okla. 3, 300 P. 672, 75 A.L.R. 1098 (1931).

2 Womack v. Stegner, 293 S.W.2d 124 (Tex. Civ. App. El Paso 1956), writ refused n.r.e.

3 Womack v. Stegner, 293 S.W.2d 124 (Tex. Civ. App. El Paso 1956), writ refused n.r.e.

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D. Leaving Blank for Grantee's Name

§ 35. Sufficiency of authority to fill blank; effect of grantor's death

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 32

In the lifetime of the grantor, the name of the grantee may be inserted, even by the grantee personally, without authority in writing, and authority may be inferred from the circumstances of the case[1] or may be given by parol.[2] However, some courts have held that there must be written authority to fill in the blank.[3]

The authority of an agent to fill in the name of the grantee is governed by the general agency rule that the death of the principal terminates the authority of the agent, at least where such authority is not coupled with an interest,[4] but where it is coupled with an interest, the death of the grantor, after delivery of the deed but prior to filling in the blank with the grantee's name, is immaterial.[5]

Footnotes

1 Guthrie v. Field, 85 Kan. 58, 116 P. 217 (1911); Johnson v. Rost, 164 Minn. 154, 204 N.W. 642 (1925); Edmonson v. Waterston, 342 Mo. 1082, 119 S.W.2d 318 (1938).

2 Board of Educ. of City of Minneapolis v. Hughes, 118 Minn. 404, 136 N.W. 1095 (1912); Edmonson v. Waterston, 342 Mo. 1082, 119 S.W.2d 318 (1938); Calhoun v. Drass, 319 Pa. 449, 179 A. 568 (1935).

3 Curlee v. Morris, 196 Ark. 779, 120 S.W.2d 10 (1938); Trout v. Taylor, 220 Cal. 652, 32 P.2d 968 (1934).

4 Stalting v. Stalting, 52 S.D. 318, 217 N.W. 390 (1927).

5 Womack v. Stegner, 293 S.W.2d 124 (Tex. Civ. App. El Paso 1956), writ refused n.r.e.

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D. Leaving Blank for Grantee's Name

§ 36. Unauthorized insertion of grantee's name

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 32

Forms

Am. Jur. Pleading and Practice Forms, Deeds § 8 (Complaint, petition, or declaration—For cancellation of deed—Allegation—Wrongful insertion of grantee's name in deed)

Am. Jur. Pleading and Practice Forms, Deeds § 10 (Answer—Defense—Grantor estopped to deny grantee's title—Grantor executed deed in blank as to grantee)

Subject to estoppel in favor of an innocent purchaser,[1] a deed is ineffectual to convey title where a blank for the name of the grantee was filled in without any authority from the grantor[2] or with a name other than that of the intended grantee.[3]

Footnotes

1 § 37.

2 Bardin v. Grace, 167 Ala. 453, 52 So. 425 (1910); Curlee v. Morris, 196 Ark. 779, 120 S.W.2d 10 (1938); Orloff v. Mosher, 64 Cal. App. 2d 6, 147 P.2d 675 (4th Dist. 1944); Osby v. Reynolds, 260 Ill. 576, 103 N.E. 556 (1913); Bretta v. Meltzer, 280 Mass. 573, 182 N.E. 827 (1932); Utah State Building & Loan Ass'n v. Perkins, 53 Utah 474, 173 P. 950 (1918).

3 Osby v. Reynolds, 260 Ill. 576, 103 N.E. 556 (1913).

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IV. Parties

D. Leaving Blank for Grantee's Name

§ 37. Rights of innocent purchaser or mortgagee

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 32

In favor of an innocent purchaser or mortgagee and as against a grantor who entrusts to an agent a deed executed in blank as to the name of the grantee, the doctrine of apparent authority, or of estoppel, precludes the grantor from denying that title passed under the deed.[1] However, no estoppel can be raised against the grantor whose agent inserts the agent's own name and then conveys or mortgages the property in fraud of the principal[2] or where the deed is procured by misrepresentation and used in fraud of the grantor after filling in the name of a grantee unknown to the grantor.[3]

Footnotes

1 Hughes v. Hughes, 74 Cal. App. 2d 327, 168 P.2d 429 (2d Dist. 1946); Guthrie v. Field, 85 Kan. 58, 116 P. 217 (1911); Edmonson v. Waterston, 342 Mo. 1082, 119 S.W.2d 318 (1938).

2 Westlake v. Dunn, 184 Mass. 260, 68 N.E. 212 (1903).

3 Bardin v. Grace, 167 Ala. 453, 52 So. 425 (1910).

23 Am. Jur. 2d Deeds V A Refs.

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V. Description of Property Conveyed

A. In General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Deeds 37.1, 38(1)

A.L.R. Library

A.L.R. Index, Deeds
A.L.R. Index, Quitclaim Deeds
West's A.L.R. Digest, Deeds 37.1, 38(1)

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V. Description of Property Conveyed

A. In General

§ 38. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 37.1, 38(1)

It is essential, in order that a deed may be operative as a legal conveyance, that the land granted and intended to be conveyed be described with sufficient definiteness and certainty to locate and distinguish it from other lands of the same kind.[1] Language used in the descriptive clause of a deed is less important than the language of the granting clause in denoting what interest in land is conveyed by the deed.[2] If the land intended to be conveyed is not identifiable from the words of the deed, aided by extrinsic evidence explanatory of the terms used[3] or by reference to another instrument,[4] the deed is inoperative.[5]

Footnotes

1 Curry v. Curry, 267 Ga. 66, 473 S.E.2d 760 (1996); McDonald v. Jones, 258 Mont. 211, 852 P.2d 588 (1993); Baylor v. Soska, 540 Pa. 435, 658 A.2d 743 (1995); Catlett v. Catlett, 630 S.W.2d 478 (Tex. App. Fort Worth 1982), writ refused n.r.e., (July 14, 1982); Chesapeake Corp. of Virginia v. McCreery, 216 Va. 33, 216 S.E.2d 22 (1975).

2 Chevy Chase Land Co. v. U.S., 355 Md. 110, 733 A.2d 1055 (1999).

3 Chesapeake Corp. of Virginia v. McCreery, 216 Va. 33, 216 S.E.2d 22 (1975).

4 § 50.

5 Blue Ridge Apartment Co. v. Telfair Stockton & Co., 205 Ga. 552, 54 S.E.2d 608 (1949); West v. Witschner, 428 S.W.2d 538 (Mo. 1968).

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V. Description of Property Conveyed

A. In General

§ 39. Blank left for description; signature of blank deed

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 37.1, 39

A.L.R. Library

Effect of supplying of description of property conveyed after manual delivery of deed or mortgage, 11 A.L.R.2d 1372

A deed is inoperative to convey any property where it is delivered in blank as to the land intended to be conveyed and no authority is given to the grantee to fill in descriptive data.[1] There is no implication of authority to fill in a description of property from the mere fact of possession of a deed signed in blank by the grantor.[2] Such authority cannot be given by parol and a deed with a description filled in pursuance of oral authority is void by reason of the Statute of Frauds.[3] The mere fact that the description inserted in a blank deed after delivery is the description of the property which the grantor had in mind at the time the deed was signed is not sufficient to validate a deed in fact signed in blank.[4]

In some jurisdictions, however, a deed which has been signed in blank with authority given to the grantee to fill in the descriptive data is operative to pass title after the description has been properly filled in.[5]

Footnotes

1 Dahlberg v. Johnson's Estate, 70 Idaho 51, 211 P.2d 764, 11 A.L.R.2d 1365 (1949); West v. Witschner, 428 S.W.2d 538 (Mo. 1968).

2 West v. Witschner, 428 S.W.2d 538 (Mo. 1968); Barth v. Barth, 19 Wash. 2d 543, 143 P.2d 542 (1943).

3 Boyd Lumber Co. v. Mills, 146 Ga. 794, 92 S.E. 534 (1917).

4 Dahlberg v. Johnson's Estate, 70 Idaho 51, 211 P.2d 764, 11 A.L.R.2d 1365 (1949); West v. Witschner, 428 S.W.2d 538 (Mo. 1968); Barth v. Barth, 19 Wash. 2d 543, 143 P.2d 542 (1943).

As to leaving a blank for the name of the grantee, see §§ 32 to 37.

5 Glasscock v. Farmers Royalty Holding Co., 152 F.2d 537 (C.C.A. 5th Cir. 1945); Curry v. Curry, 267 Ga. 66, 473 S.E.2d 760 (1996); Reserve Petroleum Co. v. Hodge, 147 Tex. 115, 213 S.W.2d 456, 7 A.L.R.2d 288 (1948).

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B. Sufficiency, in General

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West's Key Number Digest, Deeds 38(1), 38(4), 38(5), 41

A.L.R. Library

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A.L.R. Index, Quitclaim Deeds
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V. Description of Property Conveyed

B. Sufficiency, in General

§ 40. Generally; liberal attitude of courts

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 38(1)

A description of property contained in a deed must be sufficient to identify the land being sold[1] with reasonable certainty.[2] The question of whether a description is sufficient to convey property is one of law for the courts to decide.[3] The courts are extremely liberal in construing descriptions of premises conveyed by deed with the view of determining whether those descriptions are sufficiently definite and certain to identify land and make the instrument operative as a conveyance. Because the purpose of a description of the land which is the subject matter of a deed of conveyance is to identify such subject matter,[4] a deed generally will not be declared void for uncertainty in description if it is possible by any reasonable rules of construction to ascertain from the description, aided by extrinsic evidence,[5] what property is intended to be conveyed.[6]

A description contained in a deed will be sufficient so long as quantity, identity, or boundaries of property can be determined from the face of the instrument or by reference to extrinsic evidence to which it refers.[7] It is sufficient if the description in the deed or conveyance furnishes a means of identification of the land.[8] The description is sufficient if the reference to the property in the deed is such that the court, by pursuing an inquiry based upon the words of reference, is able to identify the particular property to the exclusion of all other property.[9]

It is only when the description of land is so inaccurate that its identity is wholly uncertain at the time of the execution of the conveyance that a grant or deed is void.[10] A deed is wholly inoperative where it does not contain a description sufficient to identify the land intended to be conveyed with reasonable certainty[11] and to locate and distinguish it from other lands of the same kind.[12] In other words, a deed which contains a description so vague that a surveyor would not be able to locate the land is considered a nullity.[13]

Even if a description in a deed is not completely certain and accurate, it may yet be sufficient to impose constructive notice on subsequent purchasers.[14]

CUMULATIVE SUPPLEMENT

Cases:

Perfection in legal descriptions of tracts of land is not required; if the premises are so referred to as to indicate the grantor's intention to convey a particular tract of land, extrinsic evidence is admissible to show the precise location and boundaries of such tract. Central Mortg. Co. v. Humphrey, 759 S.E.2d 896 (Ga. Ct. App. 2014).

When part of a deed's property description is incorrect, courts will disregard that part as surplusage and enforce the deed if the remainder of the description identifies the land with sufficient certainty. Piranha Partners v. Neuhoff, 596 S.W.3d 740 (Tex. 2020).

[END OF SUPPLEMENT]

Footnotes

1 Harpagon Company, LLC v. Gelfond, 279 Ga. 59, 608 S.E.2d 597 (2005).

2 ABN AMRO Mortg. Group, Inc. v. Southern Sec. Federal Credit Union, 372 S.W.3d 121 (Tenn. Ct. App. 2011), appeal denied, (Apr. 11, 2012).

3 Ward v. Murdock, 271 Ga. 216, 518 S.E.2d 685 (1999).

4 Comi v. M & M Corp., 148 Fla. 422, 4 So. 2d 389 (1941); Murdock v. Ward, 267 Ga. 303, 477 S.E.2d 835 (1996); City of Kellogg v. Mission Mountain Interests Ltd., Co., 135 Idaho 239, 16 P.3d 915 (2000); Mazzucco v. Eastman, 36 Misc. 2d 648, 236 N.Y.S.2d 986 (Sup 1960), judgment aff'd, 17 A.D.2d 889, 239 N.Y.S.2d 535 (3d Dep't 1962); Mid-States Homes, Inc. v. Jones, 348 S.W.2d 420 (Tex. Civ. App. Waco 1961), writ granted, (Dec. 6, 1961) and judgment rev'd on other grounds, 163 Tex. 229, 356 S.W.2d 923 (1962).
As to the certainty of the description of the land in a contract for its sale, see Am. Jur. 2d, Vendor and Purchaser § 9.
As to whether a defective description affects notice of record of a deed, see Am. Jur. 2d, Records and Recording Laws §§ 107, 108.

5 § 260.

6 Ontario Land Co. v. Yordy, 212 U.S. 152, 29 S. Ct. 278, 53 L. Ed. 449 (1909); Commercial Services of Perry, Inc. v. F.D.I.C., 199 F.3d 778 (5th Cir. 2000) (applying Mississippi law); Lankford v. Pope, 206 Ga. 430, 57 S.E.2d 538 (1950); City of Kellogg v. Mission Mountain Interests Ltd., Co., 135 Idaho 239, 16 P.3d 915 (2000); Blevins v. Manufacturers Record Pub. Co., 235 La. 708, 105 So. 2d 392 (1957); Daly v. Duwane Const. Co., 259 Minn. 155, 106 N.W.2d 631 (1960); Neil v. Jones, 497 So. 2d 797 (Miss. 1986); McDonald v. Jones, 258 Mont. 211, 852 P.2d 588 (1993); Triplett v. David H. Fulstone Co., 109 Nev. 216, 849 P.2d 334 (1993); Yoss v. Markley, 34 Ohio Op. 4, 46 Ohio L. Abs. 217, 68 N.E.2d 399 (C.P. 1946); Jones v. Mid-State Homes, Inc., 163 Tex. 229, 356 S.W.2d 923 (1962); Ratcliff v. Cyrus, 209 W. Va. 166, 544 S.E.2d 93 (2001).

7 Garner v. Bartschi, 139 Idaho 430, 80 P.3d 1031 (2003).

8 Shilts v. Young, 567 P.2d 769 (Alaska 1977); Murdock v. Ward, 267 Ga. 303, 477 S.E.2d 835 (1996); City of Kellogg v. Mission Mountain Interests Ltd., Co., 135 Idaho 239, 16 P.3d 915 (2000); Crawford v. Crawford, 176 Kan. 537, 271 P.2d 240 (1954); Daly v. Duwane Const. Co., 259 Minn. 155, 106 N.W.2d 631 (1960); Jablonowski v. Logan, 169 S.W.3d 128 (Mo. Ct. App. E.D. 2005); Blazer v. Wall, 2008 MT 145, 343 Mont. 173, 183 P.3d 84 (2008); Radspinner v. Charlesworth, 369 N.W.2d 109 (N.D. 1985); Plano Petroleum, LLC v. GHK Exploration, L.P., 2011 OK 18, 250 P.3d 328 (Okla. 2011).

9 Shilts v. Young, 567 P.2d 769 (Alaska 1977); McDonald v. Jones, 258 Mont. 211, 852 P.2d 588 (1993).
A description in a deed of the premises sought to be conveyed must be sufficiently full and definite to afford a means of identification; although the instrument need not embody a minute or perfectly accurate description of the land, it must furnish the key to the identification of the land intended to be conveyed. Lord v. Holland, 282 Ga. 890, 655 S.E.2d 602 (2008).

10 State v. Rosenquist, 78 N.D. 671, 51 N.W.2d 767 (1952).

11 Hughes v. Heard, 215 Ga. 156, 109 S.E.2d 510 (1959); McDonough v. Roland Park Co., 189 Md. 659, 57 A.2d 279 (1948).
It is only when a legal description in a deed is manifestly too meager, imperfect, or uncertain to serve as adequate means of identification that the court can adjudge the description insufficient as a matter of law. Deljoo v. SunTrust Mortg., Inc., 284 Ga. 438, 668 S.E.2d 245 (2008).

12 Mitchell v. Nicholson, 71 N.D. 521, 3 N.W.2d 83, 139 A.L.R. 1175 (1942).

13 Davis v. Hinson, 67 So. 3d 1107 (Fla. 1st DCA 2011).

14 Gulf Land & Development Co. v. McRaney, 197 So. 2d 212 (Miss. 1967).

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V. Description of Property Conveyed

B. Sufficiency, in General

§ 41. Necessity of stating location of land

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 38(1)

If other means of identification are given in the deed, the omission to set forth the town, county, or state in which the land is situated will not render the description insufficient.[1] The county in which the land is situated may be inferred from the residence of the grantor, the place where the deed was acknowledged, or the place where the instrument was recorded where the fact is shown that the grantor had property in such county to which the description given in the instrument is reasonably applicable.[2] If the description is given by house number in a certain city, it is not necessary to specify the state in which the city is located.[3]

Footnotes

1 In re Frayser's Estate, 401 Ill. 364, 82 N.E.2d 633 (1948); Holliman v. Charles L. Cherry & Associates, Inc., 569 So. 2d 1139 (Miss. 1990); Easterling v. Simmons, 293 S.W. 690 (Tex. Civ. App. Waco 1927), writ refused, (June 4, 1927); Holley's Ex'r v. Curry, 58 W. Va. 70, 51 S.E. 135 (1905); White v. Machovec, 214 Wis. 458, 253 N.W. 389 (1934).

2 Harrill v. Pitts, 194 La. 123, 193 So. 562 (1940); Easterling v. Simmons, 293 S.W. 690 (Tex. Civ. App. Waco 1927), writ refused, (June 4, 1927).

3 § 47.

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B. Sufficiency, in General

§ 42. Conveyance of unlocated portion of tract

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 38(4), 38(5)

The effect of a deed purporting to convey a stated number of unlocated acres of a larger tract is determined by the intention of the parties as shown by the language of the deed construed in the light of the rule[1] that a deed should be held to pass some interest if such effect may be given to it consistent with the law and the terms of the instrument.[2] Where it does not appear to be contrary to the true intent of the deed, a deed purporting to convey a stated acreage or other designated quantity of land of a larger tract, without attempt to locate and describe a particular piece as that conveyed, operates as a conveyance of an undivided interest in the larger tract[3] in proportion that the part conveyed bears to the tract.[4] This is clearly the case where the deed refers to the specified quantity of land being conveyed out of the larger tract as "undivided" or "lying in common."[5]

If, however, a conveyance is intended to transfer a particular part of a tract or lot, it must contain a sufficient description to make the boundaries of the part intended to be conveyed ascertainable.[6] A deed which purports to convey a specific part of a tract but does not definitely or adequately locate the part, referring to it merely as so many acres or other indicated quantity of the larger tract, is ineffective as a legal conveyance.[7]

Footnotes

1 § 200.

2 Gray v. Producers' Oil Co., 227 S.W. 240 (Tex. Civ. App. Galveston 1921).

3 Hodge v. Bennett, 78 Miss. 868, 29 So. 766 (1901); Seguin v. Maloney, 198 Or. 272, 253 P.2d 252, 35 A.L.R.2d 1412 (1953).

4 East v. Karter, 215 Ala. 375, 110 So. 610 (1926).

5 Crayton v. Phillips, 297 S.W. 888 (Tex. Civ. App. Austin 1927), writ granted, (Nov. 16, 1927) and aff'd, 4 S.W.2d 961 (Tex. Comm'n App. 1928); Morris v. Baird, 72 W. Va. 1, 78 S.E. 371 (1913).

6 Brasher v. Tanner, 256 Ga. 812, 353 S.E.2d 478 (1987); Neil v. Jones, 497 So. 2d 797 (Miss. 1986); McDonald v. Jones, 258 Mont. 211, 852 P.2d 588 (1993); Smith v. Proctor, 139 N.C. 314, 51 S.E. 889 (1905); McDonald v. Denson, 199 S.W.2d 707 (Tex. Civ. App. Austin 1947), writ refused n.r.e.

7 Brasher v. Tanner, 256 Ga. 812, 353 S.E.2d 478 (1987); Neil v. Jones, 497 So. 2d 797 (Miss. 1986); McDonald v. Jones, 258 Mont. 211, 852 P.2d 588 (1993); Haines v. Mensen, 233 Neb. 543, 446 N.W.2d 716 (1989); Cathey v. Buchanan Lumber Co., 151 N.C. 592, 66 S.E. 580 (1909); Morris v. Baird, 72 W. Va. 1, 78 S.E. 371 (1913).

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V. Description of Property Conveyed

B. Sufficiency, in General

§ 43. Conveyance of unlocated portion of tract—Grantee's right of selection

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 38(4), 38(5)

Under a deed giving the grantee the right to select the location of the acreage out of a larger tract, no title passes until the selection is made and that prior to that time the grantee has, at the most, a contractual right to acquire title.[1]

Footnotes

1 Builders Supplies Co. of Goldsboro, N. C., Inc. v. Gainey, 282 N.C. 261, 192 S.E.2d 449 (1972).

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23 Am. Jur. 2d Deeds § 44

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V. Description of Property Conveyed

B. Sufficiency, in General

§ 44. Description partly erroneous or uncertain

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 38(1)

The fact that parts of the description given of the property are incorrect or incomprehensible will not destroy the operative effect of a conveyance if a sufficient part of the description remains for purposes of identification. In such cases, the misdescription will be ignored and the land held to be sufficiently described.[1] In determining the meaning of the words used, definitive words of description are preferred to words of uncertain import, and inaccurate terms may be rejected as surplusage.[2] When a grantor has used unnecessary and meaningless words with words of conveyance which serve only to confuse, cut down, or destroy known legal estates created by proper words, the unnecessary and superfluous words may be disregarded.[3] However, a writing which fails to adequately describe the beginning point of property or to provide a key by which the beginning point can be determined is ineffective as a deed.[4]

A clerical error in the use of a descriptive term in a deed description will not defeat the intent of the parties to convey a certain parcel of land in light of the sufficient expression of the parties' intent in the rest of the deed description.[5]

While it is essential that the description of the land in the conveyance should be reasonably certain and sufficient to enable subsequent purchasers to identify the premises intended to be conveyed, the description may be inaccurate, meager, or erroneous, but if it is expressed in such a manner or connected with such attendant circumstances as that a purchaser should be deemed to be put upon inquiry, a purchaser who fails to prosecute this inquiry is chargeable with all the notice he or she might have obtained had the purchaser prosecuted the inquiry.[6]

CUMULATIVE SUPPLEMENT

Cases:

Where a contradiction occurs in the description of land conveyed by grant, the false or mistaken part of the description may be rejected and effect given to the grant if the other parts of the description identify the land and do not conflict with the manifest intent of the parties. Ka%7fUpulehu Land LLC v. Heirs and Assigns of Pahukula, 136 Haw. 123, 358 P.3d 692 (2015).

[END OF SUPPLEMENT]

Footnotes

1 Podd v. Anderson, 215 Cal. App. 2d 660, 30 Cal. Rptr. 345 (3d Dist. 1963); Arbogast v. Pilot Rock Lumber Co., 215 Or. 579, 336 P.2d 329, 72 A.L.R.2d 712 (1959); Lakeview Farm, Inc. v. Enman, 166 Vt. 158, 689 A.2d 1089 (1997); Gullett v. Burton, 176 W. Va. 447, 345 S.E.2d 323 (1986).

2 Tolle v. Curley, 159 Ark. 175, 251 S.W. 377 (1923); Brenneman v. Dillon, 296 Ill. 140, 129 N.E. 564 (1920); Ladnier v. Cuevas, 138 Miss. 502, 103 So. 217 (1925); Knight v. Kimble, 1924 OK 472, 99 Okla. 48, 225 P. 909 (1924).

3 Bear v. Millikin Trust Co., 336 Ill. 366, 168 N.E. 349, 73 A.L.R. 173 (1929).

4 Croft v. Tillman, 489 S.E.2d 852 (Ga. 1997).

5 Gwathmey v. State Through Dept. of Environment, Health, and Natural Resources Through Cobey, 342 N.C. 287, 464 S.E.2d 674 (1995) ("low" rather than "high" water mark erroneously typed onto the deed by a clerk).

6 Deljoo v. SunTrust Mortg., Inc., 284 Ga. 438, 668 S.E.2d 245 (2008).

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V. Description of Property Conveyed

B. Sufficiency, in General

§ 45. Ancient deeds

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 41

A deed is not void for uncertainty because, when it is produced in evidence, the land cannot be identified by reference only to the descriptive data in the deed, the uncertainty being such as could have been removed by extrinsic evidence, but this is unavailable owing to lapse of time.[1] A liberal rule is applied to ancient deeds with respect to the identity of documents referred to.[2]

Footnotes

1 Westbrook v. Rhodes, 1923 OK 666, 92 Okla. 149, 218 P. 873 (1923).

2 Fielder v. Pemberton, 136 Tenn. 440, 189 S.W. 873 (1916).
As to the admissibility of ancient deeds and the effect of recitals in ancient deeds, see Am. Jur. 2d, Evidence § 1229.

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C. Methods of Description

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C. Methods of Description

§ 46. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 37.1, 38(1)

No land outside the stated boundaries will pass[1] unless it appears that the grantor intended that a more general description, as by designating a certain lot, control the recital of metes and bounds.[2]

A description of the lands adjoining on all sides the land conveyed will enable the latter to be identified.[3]

When interpreting deeds, "to" is a word of exclusion; a line running "to" an object excludes that object.[4]

A "metes and bounds description" defines a parcel by describing the courses and directions of its boundaries and is most often used when a parcel has an irregular shape.[5]

Footnotes

1 Houston Bros. v. Grant, 112 Miss. 465, 73 So. 284 (1916); Cox v. City & County of Dallas Levee Imp. Dist., 258 S.W.2d 851 (Tex. Civ. App. Dallas 1953), writ refused n.r.e.

2 Rio Bravo Oil Co. v. Weed, 121 Tex. 427, 50 S.W.2d 1080, 85 A.L.R. 391 (1932).

3 Brenneman v. Dillon, 296 Ill. 140, 129 N.E. 564 (1920); Humes v. Krauss, 221 Miss. 301, 72 So. 2d 737 (1954).

4 Snyder v. Haagen, 679 A.2d 510 (Me. 1996).

5 AKG Real Estate, LLC v. Kosterman, 2006 WI 106, 296 Wis. 2d 1, 717 N.W.2d 835 (2006).

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V. Description of Property Conveyed

C. Methods of Description

§ 47. By lot, street, and house number

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 38(1)

The established practice in the United States in granting or selling surveyed lands in townships is to have them surveyed and laid out in ranges and lots, causing both to be numbered in regular sequence.[1] A description by giving the number of the house relative to other houses in the same street and designating the street is sufficient to pass title to the house and curtilage,[2] at least where the house and lot are situated within a municipality having a known system of numbering.[3]

Footnotes

1 Am. Jur. 2d, Boundaries § 4.

2 Pennsylvania R. Co. v. Kearns, 71 Ohio App. 209, 26 Ohio Op. 33, 37 Ohio L. Abs. 501, 48 N.E.2d 1012 (1st Dist. Hamilton County 1943); Wallace v. McPherson, 187 Tenn. 333, 214 S.W.2d 50 (1947); Harper v. Wallerstein, 122 Va. 274, 94 S.E. 781 (1918); Gilbert v. McCreary, 87 W. Va. 56, 104 S.E. 273, 12 A.L.R. 1172 (1920).

3 Harper v. Wallerstein, 122 Va. 274, 94 S.E. 781 (1918).

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V. Description of Property Conveyed

C. Methods of Description

§ 48. By name

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 38(1)

Where certain land has acquired a name by which it is generally known or by which it may be identified with certainty, it is sufficient in a conveyance of the land to describe it by such name.[1] Such description is not void because, through error, the quantity is materially understated.[2] Where the name of the tract is appended to another and more certain description, the latter will prevail.[3]

CUMULATIVE SUPPLEMENT

Cases:

Use by grandmother's will of the name "Ranch Las Piedras" in the conveyance of all of grandmother's "right, title, and interest in Ranch Las Piedras" did not nullify the conveyance's grant of mineral rights along with the surface rights to grandchildren; use of a name to refer to the physical land on the surface did not mean that the conveyance excluded the minerals beneath it, and the name was not open to more than one reasonable construction. ConocoPhillips Company v. Ramirez, 534 S.W.3d 490 (Tex. App. San Antonio 2017), petition for review filed, (Nov. 29, 2017).

[END OF SUPPLEMENT]

Footnotes

1 Veve y Diaz v. Sanchez, 226 U.S. 234, 33 S. Ct. 36, 57 L. Ed. 201 (1912); Reeves v. Whittle, 170 Ga. 408, 153 S.E. 53, 72 A.L.R. 405 (1930); Cadwalader v. Price, 111 Md. 310, 73 A. 273 (1909); In re Freeman's Heirs at Law, 189 N.C. 790, 128 S.E. 404 (1925).

2 Smith v. Proctor, 139 N.C. 314, 51 S.E. 889 (1905).

3 Osteen v. Wynn, 131 Ga. 209, 62 S.E. 37 (1908).

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V. Description of Property Conveyed

C. Methods of Description

§ 49. "All my land," "land upon which I now live," and similar expressions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 38(1)

Forms

Am. Jur. Legal Forms 2d § 87:183 (Recital—Property described as all of grantor's property)

A deed describing land as "all" the grantor's property or "all" the grantor's property in a certain locality is not defective or void for want of a sufficient description,[1] and the description is sufficient and the property identified where it appears that the grantor owns only one piece of property to which the description can apply.[2] Under this rule, deeds which describe the property conveyed as all the real estate belonging to the grantor,[3] all the interest of the grantor in designated sections,[4] or all the grantor's property in a certain county[5] are effective. A conveyance of all the property of the grantor in a certain state is sufficient to pass title to real estate, without a particular description of it.[6] The legal effect of deed language that transfers title to real property and "all rights, ways, privileges, servitudes, an appurtenances thereunto" is to transfer all rights which existed prior to the sale.[7]

Footnotes

1 Snyder v. Bridewell, 167 Ark. 8, 267 S.W. 561 (1924); Patterson v. McClenathan, 296 Ill. 475, 129 N.E. 767 (1921); Glocksen v. Holmes, 299 Ky. 626, 186 S.W.2d 634 (1945); Palomeque v. Prudhomme, 664 So. 2d 88 (La. 1995); Yoss v. Markley, 34 Ohio Op. 4, 46 Ohio L. Abs. 217, 68 N.E.2d 399 (C.P. 1946);

Crockett v. Housing Authority of City of Dallas, 274 S.W.2d 187 (Tex. Civ. App. Dallas 1954); Roeder Co. v. Burlington Northern, Inc., 105 Wash. 2d 567, 716 P.2d 855 (1986).

2 Snyder v. Bridewell, 167 Ark. 8, 267 S.W. 561 (1924); Patterson v. McClenathan, 296 Ill. 475, 129 N.E. 767 (1921); Foster v. Roberts, 179 Ky. 752, 201 S.W. 334 (1918).

3 Lavender v. Ball, 267 Ala. 104, 100 So. 2d 331 (1958); Brusseau v. Hill, 201 Cal. 225, 256 P. 419, 55 A.L.R. 157 (1927); Roeder Co. v. Burlington Northern, Inc., 105 Wash. 2d 567, 716 P.2d 855 (1986).

4 Board of Public Instruction of Palm Beach County v. McDonald, 143 Fla. 377, 196 So. 859 (1940).

5 Snyder v. Bridewell, 167 Ark. 8, 267 S.W. 561 (1924).

6 Moffett v. International Paper Co., 243 Miss. 562, 139 So. 2d 655 (1962).

7 Palomeque v. Prudhomme, 664 So. 2d 88 (La. 1995).

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Deeds

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V. Description of Property Conveyed

C. Methods of Description

§ 50. Reference to map, plat, or other writing

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 40

Forms

Am. Jur. Legal Forms 2d § 87:186 (Recital—Property described by reference to map)

Real estate is sufficiently described in a deed by reference for identification to a map, another deed, or patent in which such land is sufficiently described to be identifiable.[1] Reference to a map in a conveyance normally is utilized merely as a descriptive tool to identify the property and, therefore, does not itself convey.[2] Such a reference to another instrument for description of the subject matter has the effect of incorporating such instrument into the description so that that which is described will pass.[3] When reference is made to a map or other document as describing the land, the description appearing in such map or document is made a part of the deed as fully and effectually as if copied therein[4] provided the deed and the document of reference together yield such description as would have been sufficient if set forth entirely in the deed.[5]

CUMULATIVE SUPPLEMENT

Cases:

Where a deed references a plan, including a subdivision plan, the entirety of the plan becomes a part of the deed. Doyon Trustee of Oscar Olson Jr. Trust v. Fantini, 2020 ME 77, 234 A.3d 1222 (Me. 2020).

[END OF SUPPLEMENT]

Footnotes

1 Chesapeake Beach Ry. Co. v. Washington, P. & C.R. Co., 199 U.S. 247, 26 S. Ct. 25, 50 L. Ed. 175 (1905); Udo Siebel-Spath v. Construction Enterprises, Inc., 633 S.W.2d 86 (Mo. Ct. App. E.D. 1982); E. I. Du Pont De Nemours & Co. v. Moore, 57 N.C. App. 84, 291 S.E.2d 174 (1982); Sorsby v. State, 624 S.W.2d 227 (Tex. Civ. App. Houston 1st Dist. 1981); Auerbach v. County of Hanover, 252 Va. 410, 478 S.E.2d 100 (1996).
As to the location of boundaries by references to maps and plats, see Am. Jur. 2d, Boundaries § 5.
As to the construction, operation, and effect of imperfect descriptions in deeds effectuating the judicial sale of lands, see Am. Jur. 2d, Judicial Sales § 167.

2 Il Giardino, LLC v. Belle Haven Land Co., 254 Conn. 502, 757 A.2d 1103 (2000).

3 U.S. v. Pappas, 814 F.2d 1342 (9th Cir. 1987) (applying Idaho law); Carey v. Adams, 202 Md. 158, 95 A.2d 874 (1953); Ollison v. Village of Climax Springs, 916 S.W.2d 198 (Mo. 1996); Mitchell v. D'Olier, 68 N.J.L. 375, 53 A. 467 (N.J. Ct. Err. & App. 1902); Kelly v. King, 225 N.C. 709, 36 S.E.2d 220 (1945); Withington v. Derrick, 153 Vt. 598, 572 A.2d 912 (1990); Auerbach v. County of Hanover, 252 Va. 410, 478 S.E.2d 100 (1996).

4 U.S. v. Pappas, 814 F.2d 1342 (9th Cir. 1987) (applying Idaho law); Phelps v. Pacific Gas & Elec. Co., 84 Cal. App. 2d 243, 190 P.2d 209 (3d Dist. 1948); Bolan v. Avalon Farms Property Owners Ass'n, Inc., 250 Conn. 135, 735 A.2d 798 (1999); Deljoo v. SunTrust Mortg., Inc., 284 Ga. 438, 668 S.E.2d 245 (2008); Suburban Land Co. v. Town of Billerica, 314 Mass. 184, 49 N.E.2d 1012, 147 A.L.R. 660 (1943); Ollison v. Village of Climax Springs, 916 S.W.2d 198 (Mo. 1996); Catalano v. Woodward, 617 A.2d 1363 (R.I. 1992); Sorsby v. State, 624 S.W.2d 227 (Tex. Civ. App. Houston 1st Dist. 1981).

5 Chesapeake Beach Ry. Co. v. Washington, P. & C.R. Co., 199 U.S. 247, 26 S. Ct. 25, 50 L. Ed. 175 (1905).

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V. Description of Property Conveyed

C. Methods of Description

§ 51. Reference to map, plat, or other writing—Controlling effect of instrument referred to

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 40, 112

Forms

Am. Jur. Legal Forms 2d § 87:182 (Recital—Property described by reference to prior conveyance)

Generally, the document referred to controls any general words of description contained in the deed itself,[1] especially when the external reference is to a map, plat, plan, sketch, or diagram.[2] In particular, where the description is full and complete in itself and a reference to another deed is added, the quantity of land conveyed is not restricted by the reference.[3] Even if a particular deed has been referred to, a reference to property adequately described in a deed as being the same property acquired or sold in a former deed does not enlarge the description to include lands not described or to exclude any lands described therein.[4] A particular description in a deed that is certain and definite will prevail over the identifying reference in a prior deed.[5]

Footnotes

1 Casso v. Ascension Realty Co., 195 La. 1, 196 So. 1, 130 A.L.R. 636 (1940); Wellman v. Tomblin, 140 W. Va. 342, 84 S.E.2d 617 (1954).

2 Mazzucco v. Eastman, 36 Misc. 2d 648, 236 N.Y.S.2d 986 (Sup 1960), judgment aff'd, 17 A.D.2d 889, 239 N.Y.S.2d 535 (3d Dep't 1962).

3 Groth v. Johnson's Dairy Farm, Inc., 124 N.H. 286, 470 A.2d 399 (1983); Campbell v. Hogue, 7 Ohio Op. 2d 234, 80 Ohio L. Abs. 44, 152 N.E.2d 168 (C.P. 1958); Gaddes v. Pawtucket Institution for Savings, 33 R.I. 177, 80 A. 415 (1911); Campbell v. United Fuel Gas Co., 100 W. Va. 508, 130 S.E. 666 (1925).

4 Stutts v. Humphries, 408 So. 2d 940 (La. Ct. App. 2d Cir. 1981); Groth v. Johnson's Dairy Farm, Inc., 124 N.H. 286, 470 A.2d 399 (1983).

5 Groth v. Johnson's Dairy Farm, Inc., 124 N.H. 286, 470 A.2d 399 (1983).

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VI. Appurtenant and Incidental Property Rights

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Research References

West's Key Number Digest

West's Key Number Digest, Deeds 117

A.L.R. Library

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West's A.L.R. Digest, Deeds 117

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VI. Appurtenant and Incidental Property Rights

§ 52. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 117

Forms

Am. Jur. Legal Forms 2d § 87:188 (Specific grant of appurtenances—Generally)

The grant of the land carries with it the existing appurtenances unless the contrary is provided.[1] In some states, statutes provide that transfers of land transfer all incidents except those expressly excepted.[2]

Nonappurtenant and nonincidental rights and privileges do not pass unless they are expressly mentioned[3] or essential to the enjoyment of the property conveyed.[4]

Footnotes

1 Boring v. Filby, 151 Cal. App. 2d 602, 311 P.2d 869 (3d Dist. 1957); Black v. Ervin, 132 Ind. App. 470, 176 N.E.2d 142 (1961); Com. v. Richardson, 313 Mass. 632, 48 N.E.2d 678, 146 A.L.R. 648 (1943); Plaza Amusement Co. v. Rothenberg, 159 Miss. 800, 131 So. 350 (1930); Yellowstone Valley Co. v. Associated Mortg. Investors, 88 Mont. 73, 290 P. 255, 70 A.L.R. 1002 (1930); Smith v. Garbe, 86 Neb. 91, 124 N.W. 921 (1910); Mitchell v. D'Olier, 68 N.J.L. 375, 53 A. 467 (N.J. Ct. Err. & App. 1902); Feldman v. Knapp, 196 Or. 453, 250 P.2d 92 (1952); Pollock v. Lowry, 345 S.W.2d 587 (Tex. Civ. App. San Antonio 1961),

writ refused n.r.e., (June 28, 1961) and (disapproved of on other grounds by, Austin Bldg. Co. v. National Union Fire Ins. Co., 432 S.W.2d 697 (Tex. 1968)); Zainey v. Linde, 121 Wash. 572, 209 P. 1085 (1922).

2 Garrity v. Snyder, 345 Mass. 121, 186 N.E.2d 464 (1962); Yellowstone Valley Co. v. Associated Mortg. Investors, 88 Mont. 73, 290 P. 255, 70 A.L.R. 1002 (1930).

3 Muscogee Mfg. Co. v. Eagle & Phenix Mills, 126 Ga. 210, 54 S.E. 1028 (1906); Shrader v. Gardner, 70 W. Va. 780, 74 S.E. 990 (1912).

4 Muscogee Mfg. Co. v. Eagle & Phenix Mills, 126 Ga. 210, 54 S.E. 1028 (1906).

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VI. Appurtenant and Incidental Property Rights

§ 53. Appurtenance defined

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 117

An "appurtenance" is a thing belonging to another thing as principal which passes as an incident to the principal thing.[1] While the term does not in itself designate personalty,[2] it may be so used in a deed as to include it.[3] Property adapted to the use being made of real estate, and attached thereto, is presumed to have been intended to become a part thereof as between grantor and grantee, but such presumption may be overcome by showing that the owners of the property treated it as personalty during the time it was being used in connection with the real estate.[4] Some statutes declare that a thing is deemed to be incidental or appurtenant to the land when it is by right used with the land for its benefit.[5]

Footnotes

1 Pine v. Gibraltar Sav. Ass'n, 519 S.W.2d 238 (Tex. Civ. App. Houston 1st Dist. 1974), writ refused n.r.e., (Apr. 30, 1975).

2 Kelvinator Sales Corp. v. Byro Realty Corp., 136 Misc. 720, 241 N.Y.S. 632 (City Ct. 1930), aff'd, 233 A.D. 653, 249 N.Y.S. 910 (1st Dep't 1931).

3 De Graw v. Levin, 234 Ky. 73, 27 S.W.2d 432 (1930).

4 Snuffer v. Spangler, 79 W. Va. 628, 92 S.E. 106 (1917).

5 Yellowstone Valley Co. v. Associated Mortg. Investors, 88 Mont. 73, 290 P. 255, 70 A.L.R. 1002 (1930).

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VI. Appurtenant and Incidental Property Rights

§ 54. Particular property and rights

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 117

Forms

Am. Jur. Legal Forms 2d § 87:191 (Specific grant of appurtenances—With rents, issues, profits, and the like)

All easements appurtenant to land conveyed pass to the grantee unless a contrary intention is disclosed by the deed of conveyance, notwithstanding the deed does not purport expressly to include appurtenances.[1] Similarly, profits prendre connected with the land[2] to the grantee or accessory to some appurtenant easement also pass.[3] A grant of the fee of land under tidewater carries with it the right of wharfage where the outer edge of the property granted ends in tidewater.[4]

A grant of standing timber carries with it the necessary facilities for cutting and removing it,[5] and a grant of minerals implies the right to excavate them.[6]

Footnotes

1 Am. Jur. 2d, Easements and Licenses in Real Property § 91.

2 Hanson v. Fergus Falls Nat. Bank, 242 Minn. 498, 65 N.W.2d 857, 49 A.L.R.2d 1379 (1954); Mitchell v. D'Olier, 68 N.J.L. 375, 53 A. 467 (N.J. Ct. Err. & App. 1902).
As to the nature and appendancy of a profit prendre, see Am. Jur. 2d, Easements and Licenses in Real Property § 3.

3 Beardslee v. New Berlin Light & Power Co., 207 N.Y. 34, 100 N.E. 434 (1912).
4 Appleby v. City of New York, 271 U.S. 364, 46 S. Ct. 569, 70 L. Ed. 992 (1926).
5 Am. Jur. 2d, Logs and Timber §§ 51 to 56.
6 Am. Jur. 2d, Mines and Minerals §§ 158, 159.

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VI. Appurtenant and Incidental Property Rights

§ 55. Particular property and rights—Title to other land

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 117

A.L.R. Library

Deeds: meaning of terms "dwelling" or "dwelling house" or "house," as used in the conveyance or exception or reservation clause, 38 A.L.R.3d 1419

Generally, the title to land additional to that described cannot pass as an appurtenance.[1] Additions to the land by accretion or reliction which are not included within the actual boundaries of land conveyed will not pass by the conveyance as appurtenant or incident to the land conveyed.[2] Land may, however, be made appurtenant to other land by the intent and acts of the parties.[3]

When the owner of two adjoining tracts of real estate sells one of them, the purchaser takes the tract sold with all the benefits and burdens which belong to it as between it and the tract retained.[4]

CUMULATIVE SUPPLEMENT

Cases:

Land does not pass as a mere appurtenance to other land, and, consequently, no portion of the highway, or stream, will be conveyed, unless the instrument of conveyance can, by reasonable construction, be made to include it. Roy v. Woodstock Community Trust, Inc., 2013 VT 100A, 94 A.3d 530 (Vt. 2014).

[END OF SUPPLEMENT]

Footnotes

1 Humphreys v. McKissock, 140 U.S. 304, 11 S. Ct. 779, 35 L. Ed. 473 (1891); Alford v. Rodgers, 242 Ala. 370, 6 So. 2d 409 (1942); Moss v. Chappell, 126 Ga. 196, 54 S.E. 968 (1906).

2 Am. Jur. 2d, Waters § 330.

3 Carpenter v. Sickles, 13 Misc. 2d 1025, 181 N.Y.S.2d 665 (Sup 1958).

4 Meier v. Maguire, 172 Neb. 52, 108 N.W.2d 397 (1961).

23 Am. Jur. 2d Deeds § 56

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VI. Appurtenant and Incidental Property Rights

§ 56. Particular property and rights—Structures on land; fixtures and personalty

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 117

A.L.R. Library

Estoppel to assert that article annexed to realty is or is not a fixture, 60 A.L.R.2d 1209

Forms

Am. Jur. Legal Forms 2d § 87:192 (Specific grant of appurtenances—With fixtures and articles of personal property)

In the absence of a reservation in the deed, buildings and property affixed to, or used in connection with, the realty in such way as to constitute fixtures pass as a matter of course to the grantee upon a conveyance of the land.[1] Things may pass as incidents to or appurtenances of the realty, although not annexed, when they are essential to its use.[2]

On the other hand, personal property on land at the time of a conveyance which cannot be regarded as a fixture does not pass as an incident to, or an appurtenance of, the land.[3]

Footnotes

1 Herzog v. Marx, 202 N.Y. 1, 94 N.E. 1063 (1911); Robey v. Plain City Theatre Co., 126 Ohio St. 473, 186 N.E. 1, 91 A.L.R. 975 (1933); First Nat. Bank of Mount Carmel v. Reichneder, 371 Pa. 463, 91 A.2d 277 (1952).

2 Yellowstone Valley Co. v. Associated Mortg. Investors, 88 Mont. 73, 290 P. 255, 70 A.L.R. 1002 (1930).

3 Taylor v. Plunkett, 20 Del. 467, 4 Penne. 467, 56 A. 384 (Super. Ct. 1903); Yellowstone Valley Co. v. Associated Mortg. Investors, 88 Mont. 73, 290 P. 255, 70 A.L.R. 1002 (1930).

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VI. Appurtenant and Incidental Property Rights

§ 57. Particular property and rights—Tort claims for damages

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 117

The right to damages for trespass or other injury to real estate previous to the conveyance thereof is assignable,[1] but such right does not pass by a conveyance of the land in the absence of provision in the deed.[2] The happening of damage, however, is an element of the cause of action; consequently, the grantee may maintain suit for any damage appearing after the grantee has acquired title.[3]

Footnotes

1 Am. Jur. 2d, Assignments § 62.

2 Irvine v. City of Oelwein, 170 Iowa 653, 150 N.W. 674 (1915); In re Witherill's Estate, 178 Or. 253, 166 P.2d 129 (1946).

3 Noonan v. Pardee, 200 Pa. 474, 50 A. 255 (1901).

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23 Am. Jur. 2d Deeds § 58

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VI. Appurtenant and Incidental Property Rights

§ 58. Under quitclaim deed

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 117

A quitclaim deed does not carry with it as an appurtenance or accessory any right of the grantor's which would not pass by a warranty deed.[1]

Footnotes

1 Stephenson v. Patton, 86 Kan. 379, 121 P. 498 (1912).

23 Am. Jur. 2d Deeds VII A Refs.

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VII. Exceptions and Reservations

A. In General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Deeds 137 to 143

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A.L.R. Index, Deeds
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VII. Exceptions and Reservations

A. In General

§ 59. Generally; definitions and distinctions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 137, 138, 141

A "reservation" is a right in favor of the grantor created out of or retained in the granted premises.[1] It is a clause in a deed whereby the grantor reserves some new thing, issuing out of the thing granted which was not in esse before.[2] A reservation allows a grantor's whole interest in the property to pass to the grantee but revests a newly created interest in the grantor.[3] A reservation by implication in favor of the grantor is not favored by courts.[4] Also, one may reserve only property rights that one holds at the time of conveyance.[5]

On the other hand, an "exception" operates on the description of the property and withdraws from the description the excepted property.[6] It prevents some part of the grantor's interest from passing to the grantee.[7]

Despite the fact that they are distinguishable, however, the terms "reservation" and "exception" are commonly used as interchangeable terms.[8] However, where it is possible that the terms "reserving" and "excepting" were being treated as synonyms in a deed, the court must interpret the terms within the context of the surrounding language in a way to effectuate the intent of the parties.[9] Accordingly, in a deed, words creating an exception are to have effect as such although the word "reservation" is employed.[10] A "reservation" clause in a deed pertains to incorporeal things that do not exist at the time a conveyance is made; however, even if the term "reservation" is used, if the thing or right reserved is in existence, then the language in fact constitutes an "exception."[11]

Footnotes

1 Phoenix Title & Trust Co. v. Smith, 101 Ariz. 101, 416 P.2d 425 (1966); Proctor v. Graham, 32 Colo. App. 102, 506 P.2d 1236 (App. 1973); Bagby v. Bredthauer, 627 S.W.2d 190 (Tex. App. Austin 1981); Okemo Mountain, Inc. v. Town of Ludlow Zoning Bd. of Adjustment, 164 Vt. 447, 671 A.2d 1263 (1995).

2 Nixon v. AgriBank, FCB, 686 F.3d 912 (8th Cir. 2012).

3 McCormick v. Union Pacific Resources Co., 14 P.3d 346 (Colo. 2000), as modified, (Dec. 14, 2000); Bauer v. Lancaster County School Dist. 001, 243 Neb. 655, 501 N.W.2d 707, 83 Ed. Law Rep. 805 (1993); Palmer v. Campbell, 1958 OK 271, 333 P.2d 957 (Okla. 1958); Sheaffer v. Caruso, 544 Pa. 279, 676 A.2d 204 (1996); Bagby v. Bredthauer, 627 S.W.2d 190 (Tex. App. Austin 1981); Cottrill v. Ranson, 200 W. Va. 691, 490 S.E.2d 778 (1997).

As to what may be reserved, see § 60.

4 Farm & Ranch Investors, Ltd. v. Titan Operating, L.L.C., 369 S.W.3d 679 (Tex. App. Fort Worth 2012), review denied, (Jan. 18, 2013).

5 In re Guite, 190 Vt. 90, 2011 VT 58, 24 A.3d 1192 (2011).

6 Proctor v. Graham, 32 Colo. App. 102, 506 P.2d 1236 (App. 1973); Christman v. Emineth, 212 N.W.2d 543, 70 A.L.R.3d 366 (N.D. 1973); Sheaffer v. Caruso, 544 Pa. 279, 676 A.2d 204 (1996); Bagby v. Bredthauer, 627 S.W.2d 190 (Tex. App. Austin 1981); Cottrill v. Ranson, 200 W. Va. 691, 490 S.E.2d 778 (1997).

7 Willard v. First Church of Christ, Scientist, 7 Cal. 3d 473, 102 Cal. Rptr. 739, 498 P.2d 987 (1972); Bauer v. Bauer, 180 Neb. 177, 141 N.W.2d 837 (1966); Sheaffer v. Caruso, 544 Pa. 279, 676 A.2d 204 (1996); Bagby v. Bredthauer, 627 S.W.2d 190 (Tex. App. Austin 1981).

8 Nature Conservancy v. Kolb, 313 Ark. 110, 853 S.W.2d 864 (1993); Main v. Legnitto, 230 Cal. App. 2d 667, 41 Cal. Rptr. 223 (1st Dist. 1964); O'Brien v. Village Land Co., 794 P.2d 246 (Colo. 1990); Stephan v. Kentucky Valley Distilling Co., 275 Ky. 705, 122 S.W.2d 493 (1938); Bagby v. Bredthauer, 627 S.W.2d 190 (Tex. App. Austin 1981); Chournos v. D'Agnillo, 642 P.2d 710 (Utah 1982); Sally-Mike Properties v. Yokum, 175 W. Va. 296, 332 S.E.2d 597 (1985).

9 In re Guite, 190 Vt. 90, 2011 VT 58, 24 A.3d 1192 (2011).

10 In re Guite, 190 Vt. 90, 2011 VT 58, 24 A.3d 1192 (2011).

11 Ralston v. Ralston, 2012 PA Super 234, 55 A.3d 736 (2012).

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VII. Exceptions and Reservations

A. In General

§ 60. What may be excepted or reserved

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 140, 143

Forms

Am. Jur. Legal Forms 2d § 87:202 (Deed provision—Excepting outstanding royalty interests in oil and gas rights)
Am. Jur. Legal Forms 2d § 87:206 (Deed provision—Reservation of mineral rights)

Any part of real property which may be severed from the whole by conveyance of that part may be excepted or reserved from the property conveyed.[1] An exception may consist, among other things, of a portion of the property conveyed,[2] including land under water.[3] Any right recognized by law and given effect as inhering in property, such as an easement, may be reserved[4] though a reservation of a right not amounting to an easement is not enforceable as a right of property but only as a mere contractual right.[5]

Footnotes

1 Hicks v. Phillips, 146 Ky. 305, 142 S.W. 394 (1912) (timber).

2 In re Hamilton St. in City of New York, 144 A.D. 702, 129 N.Y.S. 317 (2d Dep't 1911).

3 Whitman v. City of New York, 85 A.D. 468, 83 N.Y.S. 465 (1st Dep't 1903).

4 Gay v. Walker, 36 Me. 54, 1853 WL 1798 (1853); Dyer v. Sanford, 50 Mass. 395, 9 Met. 395, 1845 WL 4085 (1845); Haggerty v. Lee, 54 N.J.L. 580, 25 A. 319 (N.J. Ct. Err. & App. 1892).

5 Dawson v. Western Maryland R. Co., 107 Md. 70, 68 A. 301 (1907); Bailey v. Agawam Nat. Bank, 190 Mass. 20, 76 N.E. 449 (1906).

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VII. Exceptions and Reservations

A. In General

§ 61. Description of excepted property

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 137

Forms

Am. Jur. Legal Forms 2d § 87:198 (Deed provision—Excepting specified parcel)

Land embraced in an exception must be described with the same definiteness and certainty that is required when describing the property granted.[1] Conversely, that which will pass by certain descriptive words in a grant will be excepted by the same descriptive words in an exception.[2] However, the function of the description in an exception is not necessarily to identify the land but to furnish the means of identification,[3] and parol evidence may be resorted to for this purpose.[4] Just as in a deed to the whole tract,[5] the descriptive data relating to the excepted land is regarded as certain where it may be made certain.[6]

An exception of a specific part of the subject matter of the grant is effectual to exclude it from the grant notwithstanding an untrue circumstance is recited in relation to the excepted part.[7] Similarly, the validity of an exception of minerals and mineral rights previously conveyed is in no way dependent on the validity of the prior instrument as a conveyance.[8]

Footnotes

1 North Shore, Inc. v. Wakefield, 530 N.W.2d 297 (N.D. 1995); Chesapeake Corp. of Virginia v. McCreery, 216 Va. 33, 216 S.E.2d 22 (1975).

2 Mitchell v. D'Olier, 68 N.J.L. 375, 53 A. 467 (N.J. Ct. Err. & App. 1902).

3 Texas Co. v. Wall, 107 F.2d 45 (C.C.A. 7th Cir. 1939); Elsea v. Adkins, 164 Ind. 580, 74 N.E. 242 (1905); Pewitt v. Renwar Oil Corp., 261 S.W.2d 904 (Tex. Civ. App. Texarkana 1953), writ refused n.r.e.

4 § 270.

5 § 40.

6 Mitchell v. D'Olier, 68 N.J.L. 375, 53 A. 467 (N.J. Ct. Err. & App. 1902); Seavey v. Williams, 97 Or. 310, 191 P. 779 (1920).

7 King v. Jones, 199 Miss. 666, 24 So. 2d 860 (1946); Pich v. Lankford, 157 Tex. 335, 302 S.W.2d 645 (1957).

8 Oldham v. Fortner, 221 Miss. 732, 74 So. 2d 824 (1954).

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VII. Exceptions and Reservations

A. In General

§ 62. Description of excepted property—Effect of uncertain or insufficient description

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 139

Uncertainty of or insufficiency in the description of an exception results in vitiating the exception only and does not render invalid the deed as a whole.[1] If an exception is not described with certainty, the grantee is entitled to have the benefit of the defect.[2] That is, the grantee is invested with title to all the property mentioned in the deed, disregarding the exception.[3]

Footnotes

1 Shell Petroleum Corp. v. Ward, 100 F.2d 778 (C.C.A. 5th Cir. 1939); Moss v. Crabtree, 245 Ala. 610, 18 So. 2d 467 (1944); Durden v. Reynolds, 264 Ga. 34, 440 S.E.2d 170 (1994); Carr v. Baldwin, 301 Ky. 43, 190 S.W.2d 692, 162 A.L.R. 285 (1945).

2 Phoenix Title & Trust Co. v. Smith, 1 Ariz. App. 424, 403 P.2d 828 (1965), opinion vacated on other grounds, 101 Ariz. 101, 416 P.2d 425 (1966); Stephens v. Terry, 178 Ky. 129, 198 S.W. 768 (1917); Seavey v. Williams, 97 Or. 310, 191 P. 779 (1920).

3 Durden v. Reynolds, 264 Ga. 34, 440 S.E.2d 170 (1994); Chesapeake Corp. of Virginia v. McCreery, 216 Va. 33, 216 S.E.2d 22 (1975).

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VII. Exceptions and Reservations

A. In General

§ 63. Repugnancy to grant

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 139, 142

Ordinarily, the granting clause and the clause making the reservation or exception will be reconciled, and effect will be given to both.[1] An attempted reservation will not be declared void for repugnancy to the granting clause where, from an examination of the whole instrument, the intention of the parties thereto is plain and unambiguous.[2] So too, the limiting of the general words of a grant by an exception is not, as a general rule, regarded as rendering the exception void for repugnancy,[3] regardless of the position in the instrument which the exception occupies with reference to the granting part of the deed.[4] Restrictions upon the use of land are not favored, will not be extended by implication, and, when in doubt, will be construed in favor of the free use of the land.[5] In cases where a warranty deed is supported by consideration, and the grantor's interest is insufficient to give effect to both the grant and a reservation, the reservation must fail and the risk of title loss is on the grantor.[6]

Specifically, no repugnancy appears where the grantor describes a tract of land so that it is identifiable and then, with the like certainty, describes land or minerals excepted from such tract[7] or reserves some right in relation to the land conveyed.[8] An exception relating only to the quantum of the property described, and not to the quality of the estate conveyed, is not repugnant to the conveyance.[9] However, the rule denouncing repugnancy may be invoked where the reservation or exception is expressed in uncertain terms[10] or where the exception or reservation is of all the property granted or is as broad as the grant.[11] A declaration of purpose in a deed will not, without more, suffice to limit the estate granted.[12]

Footnotes

1 Bodcaw Lumber Co. v. Goode, 160 Ark. 48, 254 S.W. 345, 29 A.L.R. 578 (1923); Elsea v. Adkins, 164 Ind. 580, 74 N.E. 242 (1905); Dale v. Case, 217 Miss. 298, 64 So. 2d 344, 37 A.L.R.2d 811 (1953); Freudenberger Oil Co. v. Simmons, 75 W. Va. 337, 83 S.E. 995 (1914).

2 Dale v. Case, 217 Miss. 298, 64 So. 2d 344, 37 A.L.R.2d 811 (1953).

3 Elsea v. Adkins, 164 Ind. 580, 74 N.E. 242 (1905).

4 Carter Oil Co. v. Weil, 209 Ark. 653, 192 S.W.2d 215 (1946); Freudenberger Oil Co. v. Simmons, 75 W. Va. 337, 83 S.E. 995 (1914).

5 Hutchison v. Hill, 3 P.3d 242, 83 A.L.R.5th 819 (Wyo. 2000).

6 Cole v. Minor, 518 So. 2d 61 (Ala. 1987).

7 Freudenberger Oil Co. v. Simmons, 75 W. Va. 337, 83 S.E. 995 (1914).

8 Freudenberger Oil Co. v. Simmons, 75 W. Va. 337, 83 S.E. 995 (1914).

9 Hardison v. Lilley, 238 N.C. 309, 78 S.E.2d 111 (1953).

10 Richter v. Granite Mfg. Co., 107 Tex. 58, 174 S.W. 284 (1915).

11 Carson v. Missouri Pac. R. Co., 212 Ark. 963, 209 S.W.2d 97, 1 A.L.R.2d 784 (1948).

12 Kerr-McGee Corp. v. Henderson, 1988 OK 108, 763 P.2d 92 (Okla. 1988).

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VII. Exceptions and Reservations

A. In General

§ 64. As binding subsequent grantees of property

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 140, 143

A right or interest reserved in a duly recorded conveyance will be effective as against all who show title through the grantee although the reservation is not expressed in subsequent deeds.[1] The fact that subsequent deeds contain no language showing exceptions made in a former deed within the chain of title does not abrogate or destroy such exceptions.[2]

Footnotes

1 Wiggins v. Lykes Bros., Inc., 97 So. 2d 273 (Fla. 1957); Haven v. Wallace, 290 Ky. 314, 160 S.W.2d 619 (1942); Sheets v. Dillon, 221 N.C. 426, 20 S.E.2d 344 (1942); Schumski v. Village of Hales Corners, 14 Wis. 2d 301, 111 N.W.2d 88, 86 A.L.R.2d 855 (1961).
As to a record of deed as constructive notice to subsequent purchasers, see Am. Jur. 2d, Records and Recording Laws § 78.

2 Malamphy v. Potomac Edison Co., 140 W. Va. 269, 83 S.E.2d 755 (1954).

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VII. Exceptions and Reservations

B. Creation and Existence

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West's Key Number Digest, Deeds 137, 141

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VII. Exceptions and Reservations

B. Creation and Existence

§ 65. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 137, 141

Absent express restrictions imposed by the terms of a grant, a grantor of property conveys everything that is necessary for the beneficial use and enjoyment of the property.[1] A reservation of rights under a deed must be stated by clear language.[2] Courts do not favor reservations by implication.[3] The party asserting a limitation upon an estate conveyed has the burden of proving such limitation.[4]

A reservation or exception may be inserted in any part of the deed,[5] and in whatever part the clause appears, the deed will be construed to give effect thereto, if possible, as well as to the granting clause.[6]

Footnotes

1 Brown v. Haley, 233 Va. 210, 355 S.E.2d 563 (1987).

2 Temple-Inland Forest Products Corp. v. U.S., 988 F.2d 1418 (5th Cir. 1993) (applying Texas law); Pearson v. Virginia City Ranches Ass'n, 2000 MT 12, 298 Mont. 52, 993 P.2d 688 (2000); Station Associates, Inc. v. Dare County, 350 N.C. 367, 513 S.E.2d 789 (1999); Lewis v. Sac and Fox Tribe of Oklahoma Housing Authority, 1994 OK 20, 896 P.2d 503 (Okla. 1994); Cottrill v. Ranson, 200 W. Va. 691, 490 S.E.2d 778 (1997).

3 Temple-Inland Forest Products Corp. v. U.S., 988 F.2d 1418 (5th Cir. 1993) (applying Texas law).

4 RLM Petroleum Corp. v. Emmerich, 1995 OK 50, 896 P.2d 531 (Okla. 1995).

5 Glasgow v. Glasgow, 221 S.C. 322, 70 S.E.2d 432 (1952).

6 Freudenberger Oil Co. v. Simmons, 75 W. Va. 337, 83 S.E. 995 (1914).

As to the construction of reservations or exceptions, see §§ 265 to 270.

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VII. Exceptions and Reservations

B. Creation and Existence

§ 66. By separate instrument or by implication

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 137, 141

An absolute conveyance in a fee may be modified by a collateral instrument which in effect reserves some right to the grantor.[1] The presumption is, however, that the grantor conveys the land free from any reservation except such as the grantor has expressed in the grant[2] so that in order to limit the effect of words sufficient on their face to convey a fee, the limitation should be expressed in the instrument of conveyance[3] in language as certain and definite as that of the grant.[4] If no reservations or exceptions are found in the deed, none should be presumed.[5] In some jurisdictions, the effect of statutes providing that every estate in the land lying in grant shall be deemed an estate in fee simple and of inheritance, unless limited by express words, is to make it necessary that there be somewhere in the deed appropriate language expressly reserving some interest in and to the grantor, or the grantor's entire interest will pass by a warranty deed to real estate.[6] However, in the absence of express words in the deed, such as "absolutely and without reservation," which negative the implication,[7] a right or easement will be held to have been impliedly reserved where such right or easement is essential to the enjoyment of land remaining in the grantor's ownership. For instance, where the grantor has no other means of ingress or egress, a right of way may be deemed to have been impliedly reserved.[8]

The doctrine that an easement may be reserved by implication where essential to the use of the remainder of the property comprised in the deed is not confined to a right of way.[9] Other rights may be deemed to have been impliedly reserved but only in case of strict necessity[10] or where the grantee is estopped to deny that the right is necessary to enjoyment of the use of the land.[11]

Footnotes

1 Caffroy v. Fremlin, 198 Cal. App. 2d 176, 17 Cal. Rptr. 668 (2d Dist. 1961).

2 Higdon v. Nichols, 204 Ky. 56, 263 S.W. 665 (1924); Rall v. Purcell, 131 Or. 19, 281 P. 832 (1929); Curlee v. Anderson & Patterson, 235 S.W. 622 (Tex. Civ. App. Fort Worth 1921); Griffin v. Fairmont Coal Co., 59 W. Va. 480, 53 S.E. 24 (1905).

3 State of Georgia v. Trustees of Cincinnati Southern Ry., 248 U.S. 26, 39 S. Ct. 14, 63 L. Ed. 104 (1918); Cherry v. Brizzolara, 89 Ark. 309, 116 S.W. 668 (1909).

4 Texas Co. v. Newton Naval Stores Co., 223 Miss. 468, 78 So. 2d 751, 49 A.L.R.2d 1182 (1955); Collins v. Stalnaker, 131 W. Va. 543, 48 S.E.2d 430 (1948).

5 Curlee v. Anderson & Patterson, 235 S.W. 622 (Tex. Civ. App. Fort Worth 1921); Griffin v. Fairmont Coal Co., 59 W. Va. 480, 53 S.E. 24 (1905).

6 Palmer v. Campbell, 1958 OK 271, 333 P.2d 957 (Okla. 1958).

7 Carlton v. Seaboard Air Line Ry., 143 Ga. 516, 85 S.E. 863 (1915).

8 Am. Jur. 2d, Easements and Licenses in Real Property §§ 30, 31.

9 Tong v. Feldman, 152 Md. 398, 136 A. 822, 51 A.L.R. 1291 (1927).

10 Cherry v. Brizzolara, 89 Ark. 309, 116 S.W. 668 (1909); Bennett v. Booth, 70 W. Va. 264, 73 S.E. 909 (1912).

11 Znamanacek v. Jelinck, 69 Neb. 110, 95 N.W. 28 (1903).

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VII. Exceptions and Reservations

B. Creation and Existence

§ 67. Parol reservations and exceptions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 137, 141

A.L.R. Library

Admissibility of parol evidence with respect to reservations or exceptions upon conveyance of real property, 61 A.L.R.2d 1390

Where a deed is absolute in its terms, or without any indication, express or implied, of a claimed reservation or exception, most courts hold that parol evidence tending to show a prior or contemporaneous oral agreement or tacit understanding with respect thereto is inconsistent with or contradictory of the terms of the conveyance and, therefore, inadmissible.[1] Such evidence has also been excluded by some courts on the ground that its admission would be violative of the Statute of Frauds.[2] However, parol evidence to show a prior or contemporaneous oral reservation or exception may be admissible in some cases as falling within an exception to the parol evidence rule, or as not being within the operation of the Statute of Frauds, even where the deed is silent on the subject. Thus, such evidence has been held admissible on the grounds that the agreement or understanding as to the claimed reservation or exception was separate from or collateral to the conveyance;[3] that the deed did not purport to embrace all the subject matter or provisions of the oral agreement and that parol evidence tending to show the oral reservation or exception is, therefore, not contradictory of the terms of the conveyance;[4] and that the oral agreement had the effect of separating the subject of the reservation from the realty and converting it into personalty, so as to remove it from the operation of the Statute of Frauds[5] or bring it within an exception to the parol evidence rule.[6] Parol evidence of an exception or reservation

has been admitted under the exception to the parol evidence rule[7] permitting the admission thereof to show the true or actual consideration for a contract or conveyance.[8]

Footnotes

1 Richardson v. U.S., 330 F. Supp. 102 (S.D. Tex. 1971) (applying Texas law); Jefferson County v. McClinton, 292 Ala. 285, 293 So. 2d 294 (1974); Simpson v. Tate, 226 Ga. 558, 176 S.E.2d 62 (1970); Martin v. Grutka, 151 Ind. App. 167, 278 N.E.2d 586 (1972); Zimmer v. Bellon, 153 N.W.2d 757, 29 A.L.R.3d 1431 (N.D. 1967).

2 Schrimper v. Chicago, M. & St. P.R. Co., 115 Iowa 35, 82 N.W. 916 (1900), on reh'g, 115 Iowa 35, 87 N.W. 731 (1901); Westmoreland v. Lowe, 225 N.C. 553, 35 S.E.2d 613 (1945); Webb v. Shultz, 184 Tenn. 235, 198 S.W.2d 333 (1946).

3 Mitchell v. Weaver, 116 F. Supp. 707 (E.D. Va. 1953); Cryar v. Ogle, 19 Ala. App. 493, 99 So. 157 (1923).

4 Wood v. Village of Richfield Springs, 163 A.D. 103, 148 N.Y.S. 498 (3d Dep't 1914); Bjornson v. Rostad, 30 S.D. 40, 137 N.W. 567 (1912).

5 Soeken v. Hartwig, 124 Kan. 618, 261 P. 590 (1927); Blough v. Steffens, 349 Mich. 365, 84 N.W.2d 854 (1957).

6 Mitchell v. Weaver, 116 F. Supp. 707 (E.D. Va. 1953); Soeken v. Hartwig, 124 Kan. 618, 261 P. 590 (1927).

7 Am. Jur. 2d, Evidence §§ 1140, 1141.

8 Lloyd v. Sandusky, 203 Ill. 621, 68 N.E. 154 (1903); Zimmer v. Bellon, 153 N.W.2d 757, 29 A.L.R.3d 1431 (N.D. 1967).

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C. Reservation or Exception in Favor of Stranger

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C. Reservation or Exception in Favor of Stranger

§ 68. Reservation in favor of stranger

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 142, 143

A.L.R. Library

Reservation or exception in deed in favor of stranger, 88 A.L.R.2d 1199

Most jurisdictions adhere to the long-established rule that in a deed a mere reservation in favor of a stranger to the instrument creates in such stranger no right or interest in the property conveyed.[1] An exception or reservation in favor of a stranger to a deed is void except to conform a right which the stranger already had.[2] A reservation of interest in real property, to be good, must be made to all, some, or one of the grantors, and not to a stranger to the deed.[3]

The grantee is not estopped to deny the efficacy of the reservation in favor of a stranger,[4] and some courts have declared that a reservation in favor of a stranger to the deed is void.[5]

Some courts have called the rule against reservations in favor of strangers archaic and in conflict with the modern approach to construing deeds to effectuate the grantor's intent.[6] According to these courts, although transactions involving a stranger to the deed are disfavored, where the intent of the grantor to reserve an interest in property to a stranger is clearly shown, the court will give effect to the grantor's intent.[7]

Footnotes

1 Haynes v. Metcalf, 297 Ark. 40, 759 S.W.2d 542 (1988); Davis v. Gowen, 83 Idaho 204, 360 P.2d 403, 88 A.L.R.2d 1192 (1961); Choals v. Plummer, 353 Mich. 64, 90 N.W.2d 851 (1958); Bauer v. Bauer, 180 Neb. 177, 141 N.W.2d 837 (1966); Stetson v. Nelson, 118 N.W.2d 685 (N.D. 1962); Leidig v. Hoopes, 1955 OK 269, 288 P.2d 402 (Okla. 1955); Glasgow v. Glasgow, 221 S.C. 322, 70 S.E.2d 432 (1952); Canter v. Lindsey, 575 S.W.2d 331 (Tex. Civ. App. El Paso 1978), writ refused n.r.e., (May 30, 1979); Shirley v. Shirley, 259 Va. 513, 525 S.E.2d 274 (2000); Jolynne Corp. v. Michels, 191 W. Va. 406, 446 S.E.2d 494 (1994).
As to who is a "stranger," see § 71.

2 Haynes v. Metcalf, 297 Ark. 40, 759 S.W.2d 542 (1988).

3 Shirley v. Shirley, 259 Va. 513, 525 S.E.2d 274 (2000).

4 Guaranty Loan & Trust Co. v. Helena Imp. Dist. No. 1, 148 Ark. 56, 228 S.W. 1045 (1921); Beardslee v. New Berlin Light & Power Co., 207 N.Y. 34, 100 N.E. 434 (1912).

5 Stetson v. Nelson, 118 N.W.2d 685 (N.D. 1962); Fusaro v. Varrecchione, 51 R.I. 35, 150 A. 462 (1930); Beckley Nat. Exchange Bank v. Lilly, 116 W. Va. 608, 182 S.E. 767, 102 A.L.R. 462 (1935).

6 Willard v. First Church of Christ, Scientist, 7 Cal. 3d 473, 102 Cal. Rptr. 739, 498 P.2d 987 (1972); Townsend v. Cable, 378 S.W.2d 806 (Ky. 1964); Garza v. Grayson, 255 Or. 413, 467 P.2d 960 (1970); Simpson v. Kistler Inv. Co., 713 P.2d 751 (Wyo. 1986).

7 Conway v. Miller, 2010 MT 103, 356 Mont. 231, 232 P.3d 390 (2010).

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C. Reservation or Exception in Favor of Stranger

§ 69. Reservation in favor of stranger—Construction as an exception

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 143

A.L.R. Library

Reservation or exception in deed in favor of stranger, 88 A.L.R.2d 1199

In some cases which apparently uphold the validity of a reservation in favor of a stranger, it is apparent that the instruments in question were construed as, or considered to operate as, exceptions rather than reservations[1] and, as exceptions, to be effectual to prevent the excepted lands from passing to the grantee.[2] However, a "reservation" in favor of a stranger, even where construed to be an exception, can operate neither to create new rights in such stranger[3] nor to enlarge any of the stranger's existing rights.[4] Nor can a right which has become extinguished be revived by an attempted reservation of it in a deed between third parties.[5]

Footnotes

1 Hidalgo County Water Control and Imp. Dist. No. 16 v. Hippchen, 233 F.2d 712 (5th Cir. 1956); Boyer v. Murphy, 202 Cal. 23, 259 P. 38 (1927); Burns v. Bastien, 1935 OK 886, 174 Okla. 40, 50 P.2d 377 (1935); Tallarico v. Brett, 137 Vt. 52, 400 A.2d 959 (1979).

2 § 70.

3 Hidalgo County Water Control and Imp. Dist. No. 16 v. Hippchen, 233 F.2d 712 (5th Cir. 1956); Hodgkins v. Bianchini, 323 Mass. 169, 80 N.E.2d 464 (1948); Houghtaling v. Stoothoff, 170 Misc. 773, 12 N.Y.S.2d

207 (Sup 1939), judgment aff'd, 259 A.D. 854, 19 N.Y.S.2d 510 (2d Dep't 1940); Erwin v. Bethlehem Steel Corp., 134 W. Va. 900, 62 S.E.2d 337 (1950).

4 Hodgkins v. Bianchini, 323 Mass. 169, 80 N.E.2d 464 (1948); Erwin v. Bethlehem Steel Corp., 134 W. Va. 900, 62 S.E.2d 337 (1950).

5 Simmons v. Northern Pac. Ry. Co., 88 Wash. 384, 155 P. 1039 (1916).

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C. Reservation or Exception in Favor of Stranger

§ 70. Exception in favor of stranger

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 139, 140

A.L.R. Library

Reservation or exception in deed in favor of stranger, 88 A.L.R.2d 1199

Generally, in an instrument of conveyance, an exception attempted in favor of a stranger to the deed is, without more, ineffectual to vest any title or interest in such stranger[1] because the interest in question, where not already in the stranger, remains in the grantor.[2] Such an exception is, however, effectual to prevent the title to the excepted land from passing to the grantee,[3] and it will preclude the grantee's interfering with the stranger's enjoyment of that which was excepted even though the exception itself fails to convey any right to the stranger.[4]

Although some courts have held that by acceptance of the deed the grantee is precluded from claiming that which was excepted in favor of the stranger,[5] the grantee generally is not estopped to deny the efficacy of the exception.[6]

An exception of an interest or right already existing in the stranger operates according to its terms as an exception from the grant[7] although it does not alter or enlarge existing rights or interests in the premises which are outstanding in the stranger at the time of the deed.[8] Such an exception is effective only to confirm a preexisting right and will not itself vest any title or interest in the third person.[9]

Footnotes

1 Hidalgo County Water Control and Imp. Dist. No. 16 v. Hippchen, 233 F.2d 712 (5th Cir. 1956) (applying Texas law); Hodgkins v. Bianchini, 323 Mass. 169, 80 N.E.2d 464 (1948); Bauer v. Bauer, 180 Neb. 177, 141 N.W.2d 837 (1966); Stetson v. Nelson, 118 N.W.2d 685 (N.D. 1962); Burns v. Bastien, 1935 OK 886, 174 Okla. 40, 50 P.2d 377 (1935); Ozehoski v. Scranton Spring Brook Water Service Co., 157 Pa. Super. 437, 43 A.2d 601 (1945); Glasgow v. Glasgow, 221 S.C. 322, 70 S.E.2d 432 (1952); Toussaint v. Stone, 116 Vt. 425, 77 A.2d 824 (1951); Jolynne Corp. v. Michels, 191 W. Va. 406, 446 S.E.2d 494 (1994).

2 Rye v. Baumann, 231 Ark. 278, 329 S.W.2d 161 (1959); Mott v. Nardo, 73 Cal. App. 2d 159, 166 P.2d 37 (2d Dist. 1946); Wilson v. Gerard, 213 Miss. 177, 56 So. 2d 471 (1952); Joiner v. Sullivan, 260 S.W.2d 439 (Tex. Civ. App. Texarkana 1953), writ refused, (Nov. 4, 1953); Jolynne Corp. v. Michels, 191 W. Va. 406, 446 S.E.2d 494 (1994).

3 Stetson v. Nelson, 118 N.W.2d 685 (N.D. 1962).

4 Ozehoski v. Scranton Spring Brook Water Service Co., 157 Pa. Super. 437, 43 A.2d 601 (1945); Toussaint v. Stone, 116 Vt. 425, 77 A.2d 824 (1951).

5 Wilson v. Gerard, 213 Miss. 177, 56 So. 2d 471 (1952); Cook v. Farley, 195 Miss. 638, 15 So. 2d 352 (1943).

6 Rye v. Baumann, 231 Ark. 278, 329 S.W.2d 161 (1959); Beardslee v. New Berlin Light & Power Co., 207 N.Y. 34, 100 N.E. 434 (1912); Tallarico v. Brett, 137 Vt. 52, 400 A.2d 959 (1979).

7 Powell v. Harris, 39 Ga. App. 295, 147 S.E. 189 (1929); Gates v. Oliver, 126 Me. 427, 139 A. 230 (1927); Stetson v. Nelson, 118 N.W.2d 685 (N.D. 1962); Northwestern Public Service Co. v. Chicago & N. W. Ry. Co., 84 S.D. 271, 170 N.W.2d 351 (1969); First Nat. Bank of St. Johnsbury v. Laperle, 117 Vt. 144, 86 A.2d 635, 30 A.L.R.2d 958 (1952).

8 Hodgkins v. Bianchini, 323 Mass. 169, 80 N.E.2d 464 (1948); Northwestern Public Service Co. v. Chicago & N. W. Ry. Co., 84 S.D. 271, 170 N.W.2d 351 (1969); Erwin v. Bethlehem Steel Corp., 134 W. Va. 900, 62 S.E.2d 337 (1950).

9 Tallarico v. Brett, 137 Vt. 52, 400 A.2d 959 (1979).

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VII. Exceptions and Reservations

C. Reservation or Exception in Favor of Stranger

§ 71. Who is a "stranger"

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 140, 143

A.L.R. Library

Reservation or exception in deed in favor of stranger, 88 A.L.R.2d 1199

The general rules denying efficacy to a reservation or exception in favor of a stranger are phrased in terms of a stranger to the instrument or to the deed.[1] Strangers to the deed are those who are not parties to it.[2] It has been said, though, that what is logically meant is a stranger to the title.[3]

Footnotes

1 §§ 68, 70.

2 Conway v. Miller, 2010 MT 103, 356 Mont. 231, 232 P.3d 390 (2010); Collins v. Stalnaker, 131 W. Va. 543, 48 S.E.2d 430 (1948).

3 Lemon v. Lemon, 273 Mo. 484, 201 S.W. 103 (1918).

23 Am. Jur. 2d Deeds VIII A Refs.

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VIII. Consideration

A. In General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Deeds 14.1, 15, 17 to 19

A.L.R. Library

A.L.R. Index, Deeds

A.L.R. Index, Quitclaim Deeds

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VIII. Consideration

A. In General

§ 72. Generally, necessity

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 14.1, 15

Because a deed is an executed contract, as between the parties thereto, their heirs, or those who represent their rights only,[1] the lack of consideration alone is not sufficient cause for setting aside a deed.[2] The lack or the inadequacy of consideration may become an important factor in determining the existence of fraud[3] or of undue influence[4] inducing a conveyance of land and may become a deciding factor in ordering its cancellation[5] or reformation.[6]

Footnotes

1 Pass v. Stephens, 22 Ariz. 461, 198 P. 712 (1921); O'Connor v. Patton, 171 Ark. 626, 286 S.W. 822 (1926); Groves v. Groves, 248 Iowa 682, 82 N.W.2d 124 (1957); Briscoe v. Reschke, 170 Kan. 367, 226 P.2d 255 (1951); Brown v. Weare, 348 Mo. 135, 152 S.W.2d 649, 136 A.L.R. 286 (1941).

2 Macy Elevator, Inc. v. U.S., 97 Fed. Cl. 708 (2011) (applying Indiana law); Sintz v. Stone, 562 So. 2d 228 (Ala. 1990); In re McDonnell's Estate, 65 Ariz. 248, 179 P.2d 238 (1947); Parkey v. Baker, 254 Ark. 283, 492 S.W.2d 891 (1973); Odone v. Marzocchi, 34 Cal. 2d 431, 212 P.2d 233 (1949); Cox v. Cox, 138 Idaho 881, 71 P.3d 1028 (2003); In re Estate of Bontkowski, 337 Ill. App. 3d 72, 271 Ill. Dec. 475, 785 N.E.2d 126 (1st Dist. 2003); Ward v. Ward, 70 Mass. App. Ct. 366, 874 N.E.2d 433 (2007); Estate of Dykes v. Estate of Williams, 864 So. 2d 926 (Miss. 2003); Celtic Corp. v. Tinnea, 254 S.W.3d 137 (Mo. Ct. App. E.D. 2008); Miller v. Russell, 720 S.E.2d 760 (N.C. Ct. App. 2011); Graham v. Allen, 116 Or. 501, 241 P. 1007 (1925); Bernardy v. Colonial & U.S. Mortg. Co., 17 S.D. 637, 98 N.W. 166 (1904); Watson v. Tipton, 274 S.W.3d 791 (Tex. App. Fort Worth 2008); Barlow Soc. v. Commercial Sec. Bank, 723 P.2d 398 (Utah 1986); Estate of Jedrzejewski ex rel. Severn v. Bierma, 2008 WY 151, 197 P.3d 1254 (Wyo. 2008).

3 §§ 168 to 172.

4 §§ 177 to 184.

5 Am. Jur. 2d, Cancellation of Instruments §§ 19 to 21.

6 Am. Jur. 2d, Reformation of Instruments §§ 43 to 48.

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VIII. Consideration

A. In General

§ 73. Kinds of consideration

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 14.1

To make a deed effective to transfer title, the consideration therefor may be either a good[1] or a valuable one.[2]

Footnotes

1 In re Acken's Estate, 144 Iowa 519, 123 N.W. 187 (1909).
As to good consideration, generally, see § 75.

2 Lim v. Choi, 256 Va. 167, 501 S.E.2d 141 (1998).
As to valuable consideration, generally, see § 74.

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VIII. Consideration

A. In General

§ 74. Kinds of consideration—Valuable consideration

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 17

The term "valuable consideration" connotes that the grantor received something of value in return for the conveyance of the property,[1] such as money[2] or the satisfaction of a debt due by the grantor to the grantee.[3] Sufficient consideration for a deed may consist of marriage or a promise of marriage,[4] a promise of support,[5] or antecedent services.[6]

Footnotes

1 Nelson v. Brown, 164 Ala. 397, 51 So. 360 (1910).
As to valuable consideration in a suit for the reformation of a deed, see Am. Jur. 2d, Reformation of Instruments § 47.

2 Lovett v. Eastern Oil Co., 68 W. Va. 667, 70 S.E. 707 (1911).

3 Dunn v. Dunn, 242 N.C. 234, 87 S.E.2d 308 (1955); O'Neil v. Keisler, 26 S.W.2d 671 (Tex. Civ. App. Austin 1930).

4 Jackson v. Jackson, 222 Ill. 46, 78 N.E. 19 (1906).
As to marriage as a consideration for antenuptial and postnuptial conveyances between spouses and prospective spouses, see Am. Jur. 2d, Husband and Wife § 91.

5 Am. Jur. 2d, Support of Persons § 6.

6 Odone v. Marzocchi, 34 Cal. 2d 431, 211 P.2d 297, 17 A.L.R.2d 1109 (1949).

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VIII. Consideration

A. In General

§ 75. Kinds of consideration—Good consideration

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 17

A.L.R. Library

Knowledge or notice of inadequacy of consideration for conveyance in chain of title as affecting bona fide status of purchaser, 42 A.L.R.2d 1088

A good consideration is one founded either on love and affection toward one to whom a natural duty exists,[1] such as near relatives by either consanguinity or affinity,[2] or on a strong moral obligation supported either by some antecedent legal obligation, although unenforceable at the time, or by some present equitable duty.[3]

One may execute a deed for any reason seen fit, such as love, affection, gratitude, partiality, prejudice, or even a whim or caprice.[4] Services rendered, such as cooking meals, cleaning house, and washing clothes, may constitute consideration for a transfer of property.[5]

Deeds granted in exchange for support are valid.[6] Some statutes allow a grantor to annul the conveyance of realty based on consideration in the form of an agreement by the grantee to support the grantor during the grantor's life.[7] In some jurisdictions, a gift of property from an elderly parent to a child in exchange for a promise of support is presumptively improvident and may be rescinded.[8]

Footnotes

1 McKee v. West, 141 Ala. 531, 37 So. 740 (1904); Cannon v. Williams, 194 Ga. 808, 22 S.E.2d 838 (1942); Ward v. Ward, 70 Mass. App. Ct. 366, 874 N.E.2d 433 (2007).

2 Florida Nat. Bank and Trust Co. at Miami v. Havris, 366 So. 2d 491 (Fla. 3d DCA 1979) (disavowed on other grounds by, Chase Federal Sav. and Loan Ass'n v. Schreiber, 479 So. 2d 90 (Fla. 1985)).

3 Cannon v. Williams, 194 Ga. 808, 22 S.E.2d 838 (1942).

4 Estate of Fallon v. Fallon, 30 So. 3d 1281 (Miss. Ct. App. 2010).

5 Hutsen v. Davis, 983 So. 2d 266 (La. Ct. App. 3d Cir. 2008).

6 Rose v. Dunn, 284 Ark. 42, 679 S.W.2d 180 (1984); Thomas v. Garrett, 265 Ga. 395, 456 S.E.2d 573 (1995); Baker v. Pattee, 684 P.2d 632 (Utah 1984); Farrar v. Young, 158 W. Va. 977, 216 S.E.2d 575 (1975).

7 Herston v. Austin, 603 So. 2d 976 (Ala. 1992).

8 In re Fillion, 181 F.3d 859 (7th Cir. 1999) (applying Wisconsin law).

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VIII. Consideration

A. In General

§ 76. Recital

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 14.1

Even assuming that a consideration may be necessary to the validity of a deed or to give it effect as a conveyance,[1] it is not essential that the consideration be recited.[2] In some jurisdictions, statutes specifically authorize the conveyance of land without recitation or proof of consideration.[3]

Footnotes

1 § 72.

2 Pomper v. Behnke, 97 Cal. App. 628, 276 P. 122 (3d Dist. 1929); Halleck v. Halleck, 216 Or. 23, 337 P.2d 330 (1959).

3 Halleck v. Halleck, 216 Or. 23, 337 P.2d 330 (1959).

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VIII. Consideration

A. In General

§ 77. Adequacy

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 17

Any valuable consideration, even a nominal sum of money, is sufficient, as between the parties and their privies, to render a deed operative to pass title to property.[1] A recital of the payment and receipt of $1 and other good and valuable consideration is sufficient.[2] Mere inadequacy of consideration is not in itself sufficient to justify a court of equity in setting aside a deed.[3] However, adequacy of consideration is an element in a case where the instrument is alleged to have been procured by fraud[4] or undue influence,[5] where the grantor did not have the mental capacity to enter into the transaction,[6] or in a suit to set aside the transfer of an expectancy[7] or to reform the deed.[8]

Footnotes

1 McLeod v. McLeod, 145 Ala. 269, 40 So. 414 (1906); Morris v. Johnson, 219 Ga. 81, 132 S.E.2d 45 (1963); Bowen v. Hathaway, 202 Kan. 107, 446 P.2d 723 (1968); Strong v. Whybark, 204 Mo. 341, 102 S.W. 968 (1907); Lovett v. Eastern Oil Co., 68 W. Va. 667, 70 S.E. 707 (1911).

2 Taylor v. Jones, 285 Ala. 353, 232 So. 2d 601 (1970); Stein v. Maddox, 234 Ga. 164, 215 S.E.2d 231 (1975); Wright v. Blevins, 217 Mont. 439, 705 P.2d 113 (1985); Barnes v. McCandless Tp. Sanitary Authority, 8 Pa. Commw. 457, 303 A.2d 228 (1973); Farrar v. Young, 158 W. Va. 977, 216 S.E.2d 575 (1975).
As to the admissibility of parol evidence regarding the true consideration in such cases, see § 85.

3 Rose v. Dunn, 284 Ark. 42, 679 S.W.2d 180 (1984); Chase Federal Sav. and Loan Ass'n v. Schreiber, 479 So. 2d 90 (Fla. 1985); In re Estate of Bontkowski, 337 Ill. App. 3d 72, 271 Ill. Dec. 475, 785 N.E.2d 126 (1st Dist. 2003); Ward v. Ward, 70 Mass. App. Ct. 366, 874 N.E.2d 433 (2007); Celtic Corp. v. Tinnea, 254 S.W.3d 137 (Mo. Ct. App. E.D. 2008); Nuckols v. Nuckols, 228 Va. 25, 320 S.E.2d 734 (1984); Newport

Yacht Basin Ass'n of Condominium Owners v. Supreme Northwest, Inc., 168 Wash. App. 56, 277 P.3d 18 (Div. 1 2012); McElwain v. Wells, 174 W. Va. 61, 322 S.E.2d 482 (1984).

4 Am. Jur. 2d, Cancellation of Instruments § 21.

As to fraud affecting the validity of a deed, generally, see §§ 168 to 172.

5 Bowen v. Hathaway, 202 Kan. 107, 446 P.2d 723 (1968).

As to undue influence affecting the validity of a deed, see §§ 177 to 184.

6 Ladner v. Schindler, 457 So. 2d 1339 (Miss. 1984); Payne v. Simmons, 232 Va. 379, 350 S.E.2d 637 (1986).

7 In re Landis, 41 F.2d 700 (C.C.A. 7th Cir. 1930) (applying Illinois law); Harry v. Griffin, 210 Ga. 133, 78 S.E.2d 37 (1953); Gannon v. Graham, 211 Iowa 516, 231 N.W. 675, 73 A.L.R. 1050 (1930); Hite v. Hite, 120 Ohio St. 253, 7 Ohio L. Abs. 173, 166 N.E. 193 (1929); In re Norris' Estate, 329 Pa. 483, 198 A. 142 (1938); Hofmeister v. Hunter, 230 Wis. 81, 283 N.W. 330, 121 A.L.R. 444 (1939).

8 Am. Jur. 2d, Reformation of Instruments §§ 43 to 48.

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VIII. Consideration

A. In General

§ 78. Failure

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 19

Failure of consideration does not render a deed void.[1] Even total failure of consideration does not necessarily entitle the grantor to cancellation of the deed[2] because a deed is valid and operative as between the parties and their privies, whether or not founded on a consideration.[3] Nonpayment of the promised price gives the grantor an implied equitable lien on the land,[4] or creates a liability upon the purchaser which may be enforced in an action at law,[5] but, in the absence of additional circumstances, such as fraud, justifying equitable relief, it does not entitle grantor to cancellation of the deed.[6] The mere fact that the purchase price has not been paid is not a sufficient ground to set aside a deed; fraud must be in the original transaction and not in the nonfulfillment of the contract.[7] The cancellation of a deed for failure of consideration is justified where some independent ground of equitable jurisdiction, such as fraud, exists.[8]

Footnotes

1 Sintz v. Stone, 562 So. 2d 228 (Ala. 1990); Wooster v. Department of Fish and Game, 211 Cal. App. 4th 1020, 151 Cal. Rptr. 3d 340 (3d Dist. 2012), review denied, (Feb. 13, 2013); Slaick v. Arnold, 307 Ga. App. 410, 705 S.E.2d 206 (2010); Ward v. Ward, 70 Mass. App. Ct. 366, 874 N.E.2d 433 (2007); In re Rudell Estate, 286 Mich. App. 391, 780 N.W.2d 884 (2009); Desert Centers, Inc. v. Glen Canyon, Inc., 11 Utah 2d 166, 356 P.2d 286 (1960); Farrar v. Young, 158 W. Va. 977, 216 S.E.2d 575 (1975).

2 Am. Jur. 2d, Cancellation of Instruments § 20.

3 Ingram v. Horn, 294 Ala. 353, 317 So. 2d 485 (1975).
As to the necessity for consideration, see § 72.

4 Am. Jur. 2d, Vendor and Purchaser § 493.

5 Morris v. Johnson, 219 Ga. 81, 132 S.E.2d 45 (1963); Harry v. Griffin, 210 Ga. 133, 78 S.E.2d 37 (1953).

6 Am. Jur. 2d, Cancellation of Instruments § 20.

7 Anchor v. O'Toole, 94 F.3d 1014 (6th Cir. 1996) (applying Ohio law).

8 McCrary v. McCrary, 1988 OK 122, 764 P.2d 522 (Okla. 1988).

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VIII. Consideration

A. In General

§ 79. Illegality

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 14.1, 18, 19

An illegal consideration—that is, a consideration which is contrary to law or public policy—is insufficient consideration to support a deed.[1] Where an obviously illegal consideration is recited, the deed is void on its face.[2] However, an intent to lessen one's tax burden or the promptings of a selfish purpose in the securing of an advantage by transfer of property will not destroy an otherwise valid deed.[3]

Footnotes

1 Am. Jur. 2d, Contracts § 224.

2 Gulf Land & Development Co. v. McRaney, 197 So. 2d 212 (Miss. 1967).

3 Town of Wolf River, Langlade County v. Wisconsin Michigan Power Co., 217 Wis. 518, 259 N.W. 710, 98 A.L.R. 1369 (1935).

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VIII. Consideration

B. Presumptions and Burden of Proof

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Deeds 195

A.L.R. Library

A.L.R. Index, Deeds
A.L.R. Index, Quitclaim Deeds
West's A.L.R. Digest, Deeds 195

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VIII. Consideration

B. Presumptions and Burden of Proof

§ 80. Presumptions as to consideration

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 195

A deed of grant executed and delivered in proper form is supported by a presumption of good consideration,[1] which may arise by force of statute,[2] or, in the case of a deed under seal in a jurisdiction where seals still have efficacy,[3] from the solemnity of the seal.[4] The acknowledgment of the receipt of consideration in a deed is prima facie evidence of that fact.[5] A rebuttable presumption of the payment of a valuable consideration is raised by the recital.[6]

Footnotes

1 Combs v. Hughes, 160 Cal. App. 2d 809, 326 P.2d 1 (2d Dist. 1958); Chapman v. Chapman, 1965 OK 48, 400 P.2d 831 (Okla. 1965); Brown v. Halfin, 294 S.W.2d 290 (Tex. Civ. App. Galveston 1956), writ refused n.r.e.

2 Combs v. Hughes, 160 Cal. App. 2d 809, 326 P.2d 1 (2d Dist. 1958); Hansen v. Walker, 175 Kan. 121, 259 P.2d 242 (1953).

3 § 97.

4 Barnes v. McCandless Tp. Sanitary Authority, 8 Pa. Commw. 457, 303 A.2d 228 (1973).

5 Randle v. Grady, 224 N.C. 651, 32 S.E.2d 20 (1944).

6 Mullins v. Butte Hardware Co., 25 Mont. 525, 65 P. 1004 (1901); Farrar v. Young, 158 W. Va. 977, 216 S.E.2d 575 (1975).

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VIII. Consideration

B. Presumptions and Burden of Proof

§ 81. Presumptions as to consideration—Presence or absence of revenue stamps

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 195

A.L.R. Library

Presumption of consideration from revenue stamps on deed, 51 A.L.R.2d 1004

The presence of revenue stamps on a deed creates a presumption of the giving of consideration of an amount represented by the stamps.[1] On the other hand, the lack of revenue stamps on a deed is at most no more than negative evidence as to the amount of consideration, and it is no proof whatever of the absence of consideration.[2] In a case involving conveyances alleged to be fraudulent as to creditors, the amount of stamps, or lack thereof, may permit an inference as to the adequacy or inadequacy of the consideration or complete absence thereof.[3]

Footnotes

1 Kelly v. Threlkeld, 193 So. 2d 7 (Fla. 4th DCA 1966); Redfield v. Iowa State Highway Commission, 251 Iowa 332, 99 N.W.2d 413, 85 A.L.R.2d 96 (1959); Flynn v. Palmer, 270 Wis. 43, 70 N.W.2d 231, 51 A.L.R.2d 1000 (1955).

2 Weaver v. Crommes, 109 Ohio App. 470, 12 Ohio Op. 2d 15, 167 N.E.2d 661 (2d Dist. Miami County 1959).

3 U.S. v. Hickox, 356 F.2d 969 (5th Cir. 1966).

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VIII. Consideration

B. Presumptions and Burden of Proof

§ 82. Burden of proof

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 195

The general rule that the burden of proof rests upon the party asserting the affirmative of an issue[1] applies when the consideration for a deed is at issue. Since want of consideration is an affirmative defense,[2] the burden of proving want of consideration for a deed of grant is upon the party seeking to avoid it.[3] Where a conveyance is assailed by creditors as having been made when the grantor was insolvent, and the fraudulent intent has been established, the burden is on the grantee to show a good faith payment of a valuable consideration for the deed.[4]

Footnotes

1 Am. Jur. 2d, Evidence §§ 174 to 178.

2 Kelly v. Threlkeld, 193 So. 2d 7 (Fla. 4th DCA 1966); Hansen v. Walker, 175 Kan. 121, 259 P.2d 242 (1953).

3 In re Hobart's Estate, 82 Cal. App. 2d 502, 187 P.2d 105 (1st Dist. 1947); Brown v. Halfin, 294 S.W.2d 290 (Tex. Civ. App. Galveston 1956), writ refused n.r.e.

4 Am. Jur. 2d, Fraudulent Conveyances and Transfers § 179.

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23 Am. Jur. 2d Deeds VIII C Refs.

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VIII. Consideration

C. Parol or Extrinsic Evidence

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Evidence 419(2), 419(3), 432

A.L.R. Library

A.L.R. Index, Deeds

A.L.R. Index, Quitclaim Deeds

West's A.L.R. Digest, Deeds 419(2), 419(3), 432

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VIII. Consideration

C. Parol or Extrinsic Evidence

§ 83. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Evidence 419(2)

Where the consideration clause is itself a part of the contract, and not merely a receipt, the general rule as to the inadmissibility of evidence to vary or contradict a written contract prevails.[1] So too, when the recital of consideration in a deed gives it its operative effect, parol evidence is generally held inadmissible to vary or defeat the operation of the deed as a conveyance.[2] However, when the recital of consideration in a deed is a mere receipt, parol or extrinsic evidence is admissible to modify, explain, or contradict it. The tendency of modern times has been to regard the consideration clause in a deed merely in the light of a receipt and to allow parol evidence to explain the consideration for almost every purpose except to allow the grantor to avoid the deed where no fraud or mistake is shown.[3] Evidence of inadequate consideration is relevant only to the issue of fraud.[4] The actual consideration for a deed always may be shown, and it may be shown to be greater or less than, or different from, that recited in the deed.[5] Parol evidence that a grantee's promise to support the grantor during the grantor's life is a material part of the consideration for a deed must be clear, satisfactory, and convincing for such a promise to be determined to be material consideration.[6]

Under a statute prohibiting the introduction of parol evidence against or beyond what is contained in a deed, or what may have been said before, at the time, or after, execution of the deed, parol evidence is not admissible to show that the consideration stated as paid by the deed was not in fact paid.[7]

Footnotes

1 Richards v. Boyd, 5 V.I. 214, 344 F.2d 754 (3d Cir. 1965); Betts v. Harvey, 297 S.W. 995 (Mo. Ct. App. 1927); Clark v. Henderson, 62 N.D. 503, 244 N.W. 314, 84 A.L.R. 347 (1931).

2 § 84.

3 Richards v. Boyd, 5 V.I. 214, 344 F.2d 754 (3d Cir. 1965); Allaben v. Shelbourne, 357 Mo. 1205, 212 S.W.2d 719 (1948); Clark v. Henderson, 62 N.D. 503, 244 N.W. 314, 84 A.L.R. 347 (1931); Shehy v. Cunningham, 81 Ohio St. 289, 90 N.E. 805 (1909).

4 Nuckols v. Nuckols, 228 Va. 25, 320 S.E.2d 734 (1984).

5 § 85.

6 Vaughn v. Carter, 488 So. 2d 1348 (Ala. 1986).

7 Johnson v. Campagna, 200 So. 2d 150 (La. Ct. App. 1st Cir. 1967); Girard v. Donlon, 127 So. 2d 761 (La. Ct. App. 3d Cir. 1961).

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